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# ***JPRS Report***

## **East Asia**

***Southeast Asia  
Vietnam: Law on Criminal Procedures***

***Regulations on Implementing  
Foreign Investment Law***

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Vietnam: Law on Criminal Procedures  
Vietnam: Regulations on Implementing Foreign Investment Law

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## POLITICAL

### Law on Criminal Procedures

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[Official Document: "Law on Criminal Procedures of the Socialist Republic of Vietnam"]

[13 Jul, pp 2, 3]

[Text] Preamble

The Criminal Procedure Code of the Socialist Republic of Vietnam defines the order and procedures to be implemented in activities involving initiation of legal proceedings, investigation, prosecution, adjudication, and enforcement of judgements in criminal cases.

Thoroughly imbued with the concept of "using the people as the supporting base," this code responds to the demands for defending the socialist regime, developing socialist democracy, protecting the lawful rights and interests of citizens, and resolutely and fully dealing with all criminal acts.

Succeeding to and developing the laws on criminal procedures of our state since the August Revolution, in the spirit of renovation in all aspects of social life, this code clearly defines the functions, duties and powers of organs conducting legal proceedings; upholds the role of social organizations and citizens in participating in legal proceedings; and combines the strength of socialist legislation with the strength of the masses in the struggle against and prevention of crimes.

Strict implementation of the Criminal Procedure Code is a common task of all state agencies and social organizations and the entire people.

### Part One: General Regulations

#### Section I: Basic Principles

##### Article 1: Tasks of the Code on Criminal Procedures.

The Code on Criminal Procedures defines the order and procedures to be followed in initiating legal proceedings, investigation, prosecution, adjudication, and enforcement of sentences in criminal cases; the functions, duties, rights, and relationships between organs conducting legal proceedings; and the rights and obligations of participants in legal proceedings and of state agencies, social organizations, and citizens, aimed at the accurate and expeditious detection and the judicious and timely punishment of all criminal acts, sparing no criminal and unjustly penalizing no innocent individual.

The code contributes to the defense of the socialist regime, the protection of the lawful rights and interests of citizens, and the education of citizens in scrupulously abiding by the law and showing respect for the rules of socialist life.

##### Article 2: Ensuring socialist legislation in criminal procedures.

Every criminal procedure activity must be conducted in accordance with the stipulations of this code.

##### Article 3: Respecting and protecting basic rights of the citizen.

While engaged in legal proceedings, investigators, procurators, judges, and people's jurors within the limits of their responsibility must respect the legal rights and interests of the citizen, regularly inspect the legality and necessity of methods applied, and promptly abolish or change methods perceived to be in violation of the law or no longer necessary.

##### Article 4: Ensuring equality of all citizens before the law.

Criminal procedures are conducted in accordance with the principle that all citizens, regardless of their sex, race, religion, class, and social status, are equal before the law. Anyone who commits a crime will be prosecuted according to the law.

##### Article 5: Ensuring the habeas corpus of citizens.

No one can be arrested without a court decision, without the decision of or approval by an organ of control. The arrest and detention of a person must be carried out in strict accordance with the stipulations of this code.

All forms of coercion and corporeal punishment are strictly prohibited.

##### Article 6: Protecting the lives, health, property, honor, and dignity of citizens.

Citizens are entitled to the protection of the law for their lives, health, property, honor, and dignity.

Any actions jeopardizing the lives, health, property, honor, and dignity of citizens will be dealt with in accordance with the law.

##### Article 7: Ensuring the inviolability of residence, the safety and confidentiality of correspondence, telephone calls, and telegrams.

No one can infringe upon the residence and the safety and confidentiality of the correspondence, telephone calls, and telegrams of citizens.

House search and the search, temporary withholding, and confiscation of correspondence and telegrams carried out while conducting legal proceedings must be done in strict accordance with the stipulations of this code.

**Article 8: Participation of social organizations and citizens in criminal proceedings.**

The Vietnam Fatherland Front, Confederation of Trade Unions, Peasants Association, Ho Chi Minh Communist Youth Union, Women's Union, and other social organizations and citizens are all entitled and obliged to participate in legal proceedings in accordance with the stipulations of this code, to contribute to the struggle against and prevention of crimes, and to protect the legal rights and interests of the citizen.

Investigating agencies, organs of control, and courts are responsible for creating favorable conditions for social organizations and citizens to participate in criminal proceedings.

During phases of a criminal proceeding, if the Fatherland Front or members of the front detect actions contrary to the law of the agency conducting the proceeding, they have the right to submit motions to the authorized organs stipulated in this code. These organs must conduct an examination, resolve the issue, and reply to the social organizations submitting the motion.

**Article 9: Coordination between organs conducting legal proceedings and other state agencies.**

Within the limits of their responsibilities, state agencies will coordinate with investigating agencies, organs of control, and the courts in the struggle against and prevention of crime.

State agencies must immediately notify investigating agencies and organs of control of any criminal acts taking place within their agency and unit, and carry out the requirements of the organs or individuals conducting the legal proceeding.

**Article 10: No one may be considered guilty without a court judgement that has taken legal effect.**

No one may be considered guilty or forced to undergo punishment without a court judgement that has taken legal effect.

**Article 11: Determining the truth of a court case.**

Investigating agencies, organs of control and courts must apply all lawful measures to determine the truth of a case in an objective, comprehensive and thorough fashion, to clarify both incriminating and exculpatory evidence and the details that aggravate or extenuate the responsibilities of the accused or defendant.

The responsibility for proving culpability rests with the organs conducting the legal proceeding. The accused or defendant is not compelled to prove his innocence.

**Article 12: Ensuring the right to defense of the accused or defendant.**

The accused or defendant has the right to defend himself or to ask others to defend him.

Investigating agencies, organs of control, and courts are duty-bound to guarantee that the accused or defendant can exert his right to defense.

**Article 13: Responsibility for initiating legal proceedings and prosecuting criminal cases.**

Once signs of a criminal act are detected, investigating agencies, organs of control, and courts within the sphere of their authority, are responsible for initiating legal proceedings and applying the measures stipulated in this code to determine culpability and prosecute the offender.

**Article 14: Ensuring the impartiality of those conducting or participating in criminal proceedings.**

Judges, people's jurors, procurators, investigators, court clerks, interpreters, and experts are not allowed to conduct or participate in legal proceedings if there are good reasons to assume they may not be impartial in discharging their duties.

**Article 15: Detecting and overcoming the causes and conditions of crimes.**

In the course of conducting legal proceedings, investigating agencies, organs of control, and courts are duty-bound to seek out the causes and conditions of crimes and to request that concerned agencies and organizations apply measures to overcome and prevent these causes and conditions.

The concerned agencies and organizations must reply to the investigating agencies, organs of control, and courts on fulfillment of their requests.

**Article 16: Implementing the adjudication system with the participation of people's jurors.**

Adjudication in the people's courts is conducted with the participation of people's jurors in accordance with the stipulations of this code. In adjudicating, the people's jurors exercise equal authority with the judges.

**Article 17: Judges and people's jurors carry out their adjudicative functions independently and have to abide by the law only.**

In adjudicating, judges and people's jurors are independent and have to abide by the law only.

**Article 18: Courts adjudicate collectively.**

Courts adjudicate collectively and make decisions by a majority vote.

**Article 19: Public adjudication.**

Adjudication by the courts is carried out in public and everyone has the right to attend.

In special cases, when necessary to safeguard state secrets or to preserve social morals, courts will adjudicate in camera, but sentences must be made public.

**Article 20: Ensuring equality before the court.**

Procurators, defendants, defenders, injured parties, civil plaintiffs, civil defendants, individuals with legal rights and interests relevant to the case, and their legal representatives all have equality in the presentation of evidence and requests, and in arguments before the court.

**Article 21: Languages and scripts used in criminal proceedings.**

The language and script to be used in criminal proceedings will be Vietnamese. People conducting or participating in legal proceedings are entitled to use their own national languages and script. In such a case, an interpreter must be present.

**Article 22: Supervising adjudicative work.**

Upper-level courts will supervise the adjudicative work of lower-level courts, and the People's Supreme Court will supervise the adjudicative work of people's courts and military courts at all levels to ensure scrupulous and uniform application of the law.

**Article 23: Controlling compliance with the law in criminal proceedings.**

Organs of control are duty-bound to control compliance with the law in the conduct of criminal proceedings, to exercise prosecutorial powers, and to ensure the scrupulous and uniform implementation of the law.

During various stages of the criminal proceedings, organs of control are responsible for applying the measures defined by this code to prevent violations of the law by any individual or organization.

In discharging their duties, procurators only abide by the law and are subject to the direct guidance of the head of the organ of control at the same level and to the unified leadership of the Chief Procurator.

**Article 24: Ensuring the right of citizens to file complaints on and denunciations of the activities of organs conducting legal proceedings.**

Citizens have the right to file complaints about and denunciations of unlawful activities by investigating agencies, organs of control, courts, and any individuals belonging to these agencies.

Responsible agencies must expeditiously examine and resolve complaints and denunciations, notify in writing the complainants and denouncers of the results of their work, and adopt corrective measures.

Organs that have unjustly accused or punished people must restore their honor and interests and compensate the injured party. Individuals who have committed unlawful acts, depending upon the circumstances, must be disciplined or investigated for criminal responsibilities.

**Article 25: Ensuring the effects of court judgements and decisions.**

Court judgement and decisions that have taken legal effect must be enforced and respected by all state agencies, social organizations and citizens. Concerned individuals and organizations, within the sphere of their responsibilities, must scrupulously abide by court judgements and decisions and must bear responsibility for their implementation before the law.

**Article 26: Effect of the Code of Criminal Procedures.**

The Code of Criminal Procedures is applied to activities relevant to legal proceedings conducted by investigating agencies, organs of control and the courts of the Socialist Republic of Vietnam.

For foreigners who have committed crimes within the territory of Vietnam and are citizens of a country that has signed a reciprocal judicial assistance agreement with the Socialist Republic of Vietnam, legal proceedings are conducted in accordance with that agreement.

For foreigners who have committed crimes within the territory of Vietnam and are entitled to diplomatic privileges or preferential consular treatment and exemptions in accordance with Vietnamese law, in accordance with international agreements that the Socialist Republic of Vietnam has signed or recognized, or in accordance with international custom, court cases will be resolved by the diplomatic route.

**Section II: Organs Conducting Legal Proceedings, Persons Conducting Legal Proceedings, and Replacement of Persons Conducting Legal Proceedings**

**Article 27: Organs conducting legal proceedings and persons conducting legal proceedings.**

1. Organs conducting legal proceedings comprise:

- a. Investigating agencies.
- b. Organs of control.
- c. Courts.

2. Persons conducting legal proceedings comprise:

- a. Investigators.
- b. Procurators.
- c. Judges.
- d. People's jurors.
- e. Court clerks.

**Article 28: Cases in which persons conducting legal proceedings must be replaced.**

Persons conducting legal proceedings must refuse to conduct legal proceedings or be replaced if:

1. They are also the injured party or the plaintiff or defendant in a civil action; have legal rights and interests relevant to the case; or are the legal representative or relative of these persons or of the accused and defendant.
2. They are participating in the ongoing case as defendants, witnesses, experts or interpreters.
3. There are other distinct grounds to believe they may not be impartial in discharging their duties.

**Article 29: Power to propose replacement of persons conducting legal proceedings.**

The following persons are empowered to propose the replacement of persons conducting legal proceedings:

1. Procurators.
2. Accused individuals, defendants, injured parties, civil plaintiffs or defendants and their legal representatives.
3. Defenders.

**Article 30: Replacement of judges or people's jurors.**

1. Judges and people's jurors must refuse to participate in adjudicating or must be replaced if:

- a. They fall under one of the cases stipulated in Article 28 of this code,
- b. They are related to another on the same jury,
- c. Have participated in adjudicating the preliminary or final trial or have conducted legal proceedings in the ongoing case as an investigator, procurator, or court clerk.

A justice of the People's Supreme Court who has participated in adjudication of a court case as a director of the judicial board may also participate in further adjudication in the judicial council.

2. The replacement of judges and people's jurors before the trial begins must be decided by the court presiding judge.

The replacement of judges and people's jurors during the trial must be decided by the jury by taking a vote in the consultation room before questioning begins. When a decision is made to replace a certain member of the jury, that member may express his views. The jury will make decisions by a majority vote.

The appointment of a new member to the jury must be decided by the court presiding judge.

**Article 31: Replacement of procurators.**

Procurators must refuse to conduct legal proceedings or must be replaced if they:

- a. Fall under one of the cases stipulated in Article 28 of this code.
- b. Have conducted legal proceedings in the ongoing case as an investigator, judge, people's juror, or court clerk.

2. Replacement of a procurator before a trial begins must be decided by the head of the organ of control at the same level. If the procurator being replaced is the head of the organ of control, the decision is made by the head of the organ of control at a higher level. Under circumstances in which a procurator must be replaced during a trial, the jury will issue a decision to defer the trial.

The appointment of a different procurator must be decided by the head of the organ of control at the same or higher level.

**Article 32: Replacement of investigators.**

1. Investigators must refuse to conduct legal proceedings or be replaced if they:

- a. Fall under one of the cases stipulated in Article 28 of this code.
- b. Have conducted legal proceedings in the ongoing case as a procurator, judge, people's juror or court clerk.

2. Replacement of an investigator must be decided by the head of the investigating agency concerned.

If the investigator being replaced is the head of the investigating agency concerned, investigation in the court case will be assigned to an upper-level investigating agency.

**Article 33: Replacement of court clerks.**

1. Court clerks must refuse to conduct legal proceedings or must be replaced if they:

- a. Fall under one of the cases stipulated in Article 28 of this code.
- b. Have conducted legal proceedings in the ongoing cases as a procurator, investigator, judge or people's juror.

2. Replacement of a court clerk must be decided by the jury. Appointment of a different court clerk must be decided by the court presiding judge.

### **Section III: Participants in Legal Proceedings**

#### **Article 34: The accused and defendant.**

1. The accused is the person against whom criminal proceedings have been instituted.

The defendant is the person whom the court has decided to try.

2. The accused is entitled to know what offense he is being prosecuted for; to present evidence and make requests; to suggest the replacement of those conducting the legal proceeding, experts and interpreters in accordance with the stipulations of this code; and to defend himself or ask others to defend him.

The accused will be given copies of the decision to institute legal proceedings and of the decision to apply measures of restraint; will be given copies of investigative conclusions after the investigation is ended, and of the indictment after the organ of control decides to prosecute; and has the right to complain about the decisions of the investigating agency and the organ of control.

3. The defendant will be given copies of the decision to take the case to court for trial; may participate in the trial; may suggest replacement of those conducting the legal proceeding, experts and interpreters in accordance with the stipulations of this code; present evidence and make requests; defend himself or ask others to defend him; make a final statement before the verdict is discussed; and has the right to appeal the sentence and decisions of the court.

4. The accused and defendant must appear as requested by a summons of the investigating agency, organ of control and court; in case of absence without a legitimate reason, they may be summoned under escort.

#### **Article 35: The defender.**

1. The defender may be:

- a. A lawyer.
- b. A legal representative of the accused or defendant.
- c. A people's defense counsel.

2. The following people may not serve as defenders:

- a. Persons who have conducted legal proceedings in the ongoing case or their relatives.
- b. Persons participating in the legal proceedings of the ongoing case as a witness, expert or interpreter.

3. A defender may defend several accused or defendants in the same court case if their rights and interests do not conflict. Several defenders may defend one accused or defendant.

4. The heads of the investigating agency and organ of control, the presiding judge or the jury will issue a certificate to the defender in the case so he may discharge his defense duties.

#### **Article 36: Rights and obligations of the defender.**

1. The defender will participate in the legal proceedings from the time they are initiated against the defendant. Under circumstances in which secrecy must be maintained in the investigation of especially dangerous crimes that could cause serious damage to national security, the Chief Procurator will determine that the defender may participate in legal proceedings after the investigation is concluded.

2. The defender has the right to be present during interrogation of the accused and, with the investigator's consent, to question the accused and to be present during other investigative activities.

The defender is entitled to request the replacement of persons conducting the legal proceedings, experts and interpreters in accordance with the stipulations of this code; to present evidence and make requests; to meet with an accused or defendant in temporary custody, to read the case file and make notes of essential items after the investigation is concluded; to participate in questioning and arguments during the trial; and to complain about decisions of the organ conducting the legal proceedings, and to appeal the sentence and decision of the court if the defendant is a minor or physically or mentally incompetent, as stipulated in Point b, Item 2, Article 37 of this code.

3. The defender has an obligation to resort to all measures prescribed by the law to clarify details confirming the innocence of the accused or defendant or extenuating his responsibility; and to provide legal assistance for the accused or defendant to protect his legitimate rights and interests.

The defender may not refuse to defend an accused or defendant whose defense he has assumed without a legitimate reason.

The defender may not divulge the secrets he has learned of during discharge of his duties.

#### **Article 37: Selection and replacement of defenders.**

1. The defender will be selected by the accused, the defendant or their lawful representative.

2. In the following cases, if the accused, the defendant, or their lawful representative fail to invite a defender the investigating agency, organ of control, or court may request the bar association to appoint a defender:

- a. The accused or defendant is charged with a crime falling under the category that carries the death sentence as the highest punishment as stipulated by the Penal Code.
- b. The accused or defendant is a minor or is physically or mentally incompetent.

In the cases stipulated in points a and b, Item 2 of this article, the accused, the defendant or their legal representative still has the right to ask for replacement of a defender or to refuse to accept a defender.

**Article 38: The person in temporary custody.**

1. The person in temporary custody is someone apprehended under urgent circumstances or while in the act of committing a crime and for whom a decision is made of temporary custody before legal proceedings are initiated.

2. The person in temporary custody has the right to know the reason for his detention; to have his rights and obligations explained; to present testimony; to submit requests; and to complain about his temporary custody and other related decisions. Persons in temporary custody are obligated to comply with the stipulations on temporary custody.

**Article 39: The injured party.**

1. The injured party is the person suffering physical or spiritual damages or damages to his property caused by a crime.

2. The injured party or his lawful representative has the right to present evidence and make requests; to be informed of the results of investigation; to propose the replacement of personnel conducting the legal proceedings, experts and interpreters in accordance with the stipulations of this code; to propose the level of damages and measures taken to ensure payment of damages; to participate in trials; to complain about decisions of the investigating agency and organ of control; and to appeal the sentences and decisions of the court with regard to damages as well as punishments imposed on the defendant.

In case the injured party is deceased, his lawful representative will be entitled to the rights stipulated in this article.

3. The injured party must present himself in accordance with a summons of the investigating agency, organ of control and court; if he refuses to testify without a legitimate reason, he may have to assume criminal responsibilities according to Article 242 of the Penal Code.

4. Under circumstances in which legal proceedings in a case are initiated in accordance with the request of the injured party as stipulated in Article 88 of this code, the injured party or his lawful representative will present his accusations at the trial.

**Article 40: The civil plaintiff.**

1. The civil plaintiff is an individual, agency or organization that has suffered material losses caused by an offense and that has filed a petition requesting payment of damages.

2. The civil plaintiff or his lawful representative has the right to produce evidence and make requests; to be informed of the results of investigation; to propose the replacement of persons conducting the legal proceedings, experts and interpreters in accordance with the stipulations of this code; to suggest the level of damages and measures to ensure payment of damages; to complain about the decisions of the investigating agency and organ of control; and to appeal judgements of the court regarding payment of damages.

**Article 41: The civil defendant.**

1. The civil defendant is an individual, agency or organization stipulated by the law as having to assume material responsibility for losses caused by a criminal act.

2. The civil defendant or his lawful representative has the right to complain about the demand for damages of the civil plaintiff; to present evidence and make requests; to be informed of the results of investigation relevant to the demand for damages; to propose replacement of persons conducting legal proceedings, experts and interpreters in accordance with the stipulations of this code; to participate in trials; to complain about decisions of the investigating agency and organ of control; and to appeal the judgements of the court and its decisions on the payment of damages.

**Article 42: Persons having lawful rights and interests relevant to a case.**

Persons whose lawful rights and interests relevant to a court case or their lawful representatives may participate in trials; present evidence and make requests; and appeal the judgements or decisions of the court on matters directly relevant to their lawful rights and interests.

**Article 43: The witness.**

1. Any person knowledgeable of details relevant to a case may be summoned to serve as a witness.

2. A witness must appear as summoned by an investigating agency, organ of control and the court; and is obligated to honestly report all details that he knows about the case.



3. The following persons may not serve as a witness:

a. The defender of the accused or defendant.

b. Persons who, due to physical or mental incompetence, are incapable of comprehending the details of a case or presenting correct testimony.

4. A witness who refuses to make or avoids giving testimony without a legitimate reason must bear responsibility in accordance with Article 242 of the Penal Code; and if he gives false testimony, he must bear responsibility in accordance with Article 241 of the Penal Code.

**Article 44: The expert.**

1. An expert is an individual with the necessary knowledge in the field where his evaluation is needed and solicited by organs conducting legal proceedings.

2. The expert has a right to study the documents of a case relevant to the object of evaluation; to request the soliciting organ to provide the necessary documents for drawing conclusions; and to participate in interrogations, acquiring testimony and asking questions related to the object of evaluation.

3. The expert must be present as summoned by an investigating agency, organ of control and court.

If an expert refuses to draw a conclusion from his evaluation without a legitimate reason, he must bear responsibility in accordance with Article 242 of the Penal Code. An expert who draws false conclusions must bear responsibility in accordance with Article 241 of the Penal Code.

4. An expert must refuse to participate in legal proceedings or be replaced if he:

a. Falls under one of the cases stipulated in Items 1 and 3, Article 28 of this code.

b. Has conducted legal proceedings as an investigator, procurator, judge, people's juror or court clerk, or has participated in the ongoing case as a defender, witness or interpreter.

Replacement of an expert must be decided by the soliciting organ.

5. An expert evaluation is mandatory when necessary to determine:

a. The cause of death, nature of wounds and extent of damage caused to one's health or working capability;

b. The state of mind of an accused or defendant, in case there are doubts about their capability to assume criminal responsibility;

c. The state of mind of a witness or injured party, in case there are doubts about their capability to comprehend and present correct testimony on details of the case.

**Article 45: The interpreter.**

1. An interpreter will be requested by the investigating agency, organ of control or court under circumstances in which a person conducting or participating in legal proceedings is unable to speak Vietnamese.

2. An interpreter must be present as summoned and carry out his assigned duties; and if making false translations, must bear responsibility in accordance with Article 241 of the Penal Code.

3. An interpreter must refuse to participate in legal proceedings or be replaced if he:

a. Falls under one of the cases stipulated in Items 1 and 3, Article 28 of this code;

b. Has conducted legal proceedings as an investigator, procurator, judge, people's juror or court clerk, or has participated in legal proceedings as a defender, expert or witness in the ongoing case.

Replacement of an interpreter must be decided by the organ that requested his service.

4. The stipulations of this article apply also to those capable of using sign language for the deaf and mute.

**Article 46: Responsibility for explaining and ensuring the rights and obligations of participants in legal proceedings.**

Organs conducting legal proceedings are responsible for explaining and ensuring the rights and obligations of participants in legal proceedings; and this explanation must be recorded in the court minutes.

**Section IV: Evidence**

**Article 47: Issues that must be proven in a criminal case.**

In investigating, prosecuting and adjudicating criminal cases, the investigating agency, organ of control and court must prove:

1. Whether a crime took place, and the time, place and other details of the crime;

2. Who was the perpetrator of the criminal action, whether he is guilty or not, whether the crime was committed intentionally or unintentionally, whether he is capable of assuming criminal responsibility or not; and the purpose or motive of the crime;

3. Details that increase or extenuate the responsibility of the accused or defendant and other details concerning his person.

4. The nature and extent of damages caused by the criminal action.

**Article 48: Evidence.**

1. Evidence is anything valid that is gathered according to the procedures prescribed by this code and used by an investigating agency, organ of control and court as a basis for determining whether a criminal act has occurred and who the perpetrator is as well as other details necessary for the correct solution of a case.

2. Evidence is determined by:

- a. Material objects.
- b. The testimony of a witness, injured party, civil plaintiff, civil defendant, person in temporary custody, the accused and the defendant.
- c. The conclusion of expert evaluation.
- d. A report on investigative and adjudicative activities, and other documents.

**Article 49: Gathering evidence.**

1. To gather evidence, investigating agencies, organs of control and courts have the right to summon anyone knowledgeable about a case for questioning and to hear his presentation of issues relevant to the case; to solicit expert evaluation; to conduct searches, examinations and other investigative activities as stipulated in this code; and to request that agencies, organizations and individuals provide documents and present details clarifying a case.

2. Persons participating in legal proceedings, agencies, organizations or any individual may produce documents and objects and present issues relevant to a case.

**Article 50: Evaluating evidence.**

Investigators, procurators, judges and people's jurors will confirm and evaluate all evidence with a full sense of responsibility following a comprehensive, objective, total and full study of all details of a case.

**Article 51: Testimony of the witness.**

1. The witness will expound anything he knows about a case, about the persons of the accused, defendant and injured party; and his relationships with the accused, the defendant and injured party; and will answer questions posed.

2. Details presented by the witness will not be used as evidence if he cannot clarify how he learned of them.

**Article 52: Testimony of the injured party.**

1. The injured party will expound the details of a case and his relationships with the accused or defendant, and will answer questions posed.

2. Details presented by the injured party will not be used as evidence if he cannot clarify how he learned of them.

**Article 53: Testimony of the person in temporary custody.**

The person held in temporary custody will expound the details relevant to his being suspected of having committed a crime.

**Article 54: Testimony of the accused or defendant.**

1. The accused or defendant will expound the details of the case.

2. A confession made by the accused or defendant will be considered as evidence only if it is consistent with other evidence in the case.

A confession made by the accused or defendant cannot be used as the sole evidence for charging him with the crime.

**Article 55: Conclusion of expert evaluation.**

1. The expert will reach a conclusion on the question of which his evaluation is requested and must bear personal responsibility for that conclusion.

If the evaluation is made by a group of experts, all members of the group will sign a joint conclusion. In case of differing opinions, each member will separately note his own conclusion.

2. In case the organ conducting legal proceedings disagrees with the conclusion of the expert, it must clearly state its reasons. If the conclusion is unclear or incomplete, the organ concerned will decide to request supplementary evaluation or reevaluation.

**Article 56: Material evidence.**

Material evidence comprises articles used as a tool or means to commit a crime; articles that bear traces of a crime; articles that are objects of a crime; and other articles that serve to prove a crime and its perpetrator.

**Article 57: Gathering and preserving evidence.**

1. Material evidence should be promptly and fully gathered, have its true condition described in the record, and be included in the case file.

In case material evidence cannot be included in the case file, its photograph must be taken for inclusion in the file and the material evidence must be sealed and preserved.

2. Material evidence must be preserved intact and safeguarded against loss, misplacement and damage. The organ holding the case file is responsible for safeguarding the material evidence. Material evidence in the forms of money, gold, silver, precious metals, precious stones,

antiques, explosives, inflammables, poisons and radioactive substances must receive an expert evaluation immediately after collection and be transferred immediately to a bank or other specialized agency for safekeeping.

3. A person responsible for preserving material evidence who allows it to be lost or damaged must pay compensation; and in case he destroys or intentionally damages material evidence with the purpose of distorting the case file, he must bear responsibility in accordance with Article 236 of the Penal Code.

#### **Article 58: Disposition of material evidence.**

1. The disposition of material evidence will be decided by the head or deputy head of the investigating agency or the head or deputy head of an organ of control at the same level if the case is dismissed in the investigation phase; and by the presiding judge, deputy presiding judge or jury in the adjudicating phase. The implementation of decisions on disposition of material evidence must be noted in the file.

2. Material evidence is disposed of as follows:

- a. Material evidence in the forms of tools or means of crime or articles for which circulation is banned will be confiscated and turned over to the state.
- b. Material evidence in the forms of articles or money under socialist ownership or the ownership of others that are misappropriated by the offender or used as tools in a crime will be returned to their owners or legal custodians; in case their owners and legal custodians cannot be determined, they will be turned over to the state.
- c. Material evidence in the forms of money or property acquired through crime will be confiscated and added to the state fund.
- d. Material evidence devoid of value or unusable will be confiscated and destroyed.

3. During the processes of investigation, prosecution and adjudication, the officials stipulated in Item 1 of this article are entitled to decide on the return of material evidence stipulated in Point b, Item 2 of this article to its owner or legal custodian, if this will not adversely affect handling of the case.

4. Disputes over the ownership of material evidence will be settled through civil litigation.

#### **Article 59: Reports on investigative and adjudicative activities.**

The details recorded in arrest, search, crime scene examination, body examination, confrontation, identification and investigative experimentation reports, trial reports and other legal proceeding activities conducted as stipulated by this code may be considered as evidence.

#### **Article 60: Other documents in a court case.**

Details related to a court case that are recorded in documents provided by organs, organizations or individuals may be considered as evidence.

Under circumstances in which these documents are marked as stipulated in Article 56 of this code, they may be considered as evidence.

### **Section V: Measures of restraint**

#### **Article 61: Basis for applying measures of restraint.**

To promptly halt a criminal action or when there is a basis for believing that the accused or defendant will create difficulties for the investigation, adjudication or prosecution or will continue to commit crimes, as well as when necessary to ensure judgement enforcement, the investigating agency, organ of control or court may apply one of the following measures of restraint: arrest, temporary custody, temporary detention, house arrest, bail and the posting of a valid monetary or property bond.

#### **Article 62: Temporary detention of the accused or defendant.**

1. The following persons are empowered to issue warrants of arrest:

- a. Heads and deputy heads of people's organs of control and military organs of control at all levels;
- b. Presiding judges and deputy presiding judges of people's courts and military courts at all levels.
- c. Judges of people's courts at the provincial level or military courts at the military region level and up who preside over a trial.
- d. Chiefs and deputy chiefs of public security offices at the district level, and heads and deputy heads of investigative organs at the provincial and military region level and up. In these cases, the arrest warrant must be approved by the organ of control at the same level before it is executed.

2. Warrants of arrest must clearly show the day, month and year; the name and position of the person who issued it; and the name and address of the person to be arrested and the reason for his arrest. The warrant of arrest must bear the signature of the person who issued the order and must have a seal.

The person executing a warrant of arrest must read and explain it to the person to be arrested and must make a report on the arrest.

An arrest must be witnessed by a representative of the village, subward or city administration, or a representative of an agency or organization in the location where the person being arrested resides or works, and a neighbor of the person being arrested.

3. Arrests will not be made at night, except in case of an emergency or when the offender is caught in the act as stipulated in Articles 63 and 64 of this code.

**Article 63: Emergency arrest.**

1. Emergency arrests are permitted under the following circumstances:

- a. When there is a basis for believing that a person is preparing to commit a serious crime.
- b. When the victim or person present at the scene of the crime see him with their own eyes and confirm he is the one who committed the crime that is deemed serious and it is necessary to immediately prevent the offender from escaping.
- c. When there are traces of a crime on the person of the suspect or in the residence of the person suspected of having committed a serious crime and it is deemed necessary to immediately prevent him from escaping or destroying evidence.

2. The following persons are empowered to issue warrants of arrest in case of emergency:

- a. Chiefs and deputy chiefs of public security offices at the district level, and heads and deputy heads of investigating agencies at the provincial and military region and higher levels.
- b. Commanders of independent military units at the regimental level; and commanders of border defense posts on offshore islands or at the border.
- c. Aircraft commanders or seagoing ship captains when their aircraft or vessel has left an airport or pier.

3. The contents of a warrant of arrest and its execution in case of emergency must precisely follow the stipulations in Item 2, Article 62 of this code.

4. In all circumstances, an emergency arrest must be immediately reported in writing to the organ of control at the same level for approval. If the organ of control disapproves, the person arrested must be immediately released.

**Article 64: Arrests of persons caught in the act or who are wanted.**

1. Anyone is empowered to arrest and immediately hand over to the nearest public security office, organ of control or people's committee persons who are caught in the act of committing a crime or immediately after committing a crime, or who are being pursued as well those who are wanted. These organs must make a report and immediately hand over the person arrested to responsible investigating agencies.

2. When arresting a person caught in the act of committing a crime or a wanted person, anyone is empowered to disarm the arrested person.

**Article 65: Immediate tasks after an arrest.**

1. After a person is arrested in case of emergency or while in the act of committing a crime, the investigating agency must immediately take his statement and within a period of 24 hours must issue a decision on temporarily detaining or releasing the arrested person.

2. After the statement of a wanted person is taken, the investigating agency must immediately notify the organ issuing the wanted order and immediately hand over that person to the nearest place of temporary detention.

**Article 66: Reports.**

1. Persons executing a warrant of arrest must in all cases make a report.

The report must clearly indicate the day, hour, month, year and place of arrest; the place where the report is made; actions taken; developments during execution of the warrant of arrest; articles and documents in custody; and complaints of the person under arrest.

The report must be read to the person under arrest and witnesses. The person under arrest, the person executing the warrant of arrest, and the witnesses must sign the report; anyone who disagrees with the contents of the report has the right to note this in the report and sign it.

Temporary custody of articles of the person under arrest must be conducted in accordance with the stipulations of this code.

2. When delivering and receiving a person under arrest, both the deliverer and recipient must make a report.

Aside from the points stipulated in Item 1 of this article, an exchange report must clearly indicate the transfer of reports on the taking of testimony, collection of articles and state of health of the person under arrest; and every detail that occurred during the exchange.

**Article 67: Notification of arrest.**

The person issuing a warrant of arrest must immediately notify the family of the person under arrest and the village, subward or city administration or agency and organization in which that person resides or works. If notification interferes with the investigation, the person issuing the warrant of arrest must do so immediately after the interference ends.

**Article 68: Temporary custody.**

1. Temporary custody may be applied for persons arrested in an emergency or while caught in the act of committing a crime as stipulated in Articles 63 and 64 of this code.

2. The chief and deputy chief of a public security office at the district level, and the head or deputy head of an investigating agency at the provincial and military region or higher level are empowered to issue an order for temporary custody.

3. The temporary custody order must be sent within 24 hours to the organ of control at the same level. If the temporary custody is deemed unnecessary, the organ of control will issue a decision nullifying the order of temporary custody and immediately restoring freedom to the person in temporary custody.

The temporary custody order must clearly indicate the hour and day that the temporary custody ends and a copy must be given to the person being held.

**Article 69: Period of temporary custody.**

1. The duration of temporary custody must not exceed 3 days and 3 nights, calculated from the time the investigating agency receives the person under arrest.

2. If need be and when approved by the organ of control at the same level, the organ issuing an order for temporary custody may extend the period of temporary custody but not more than 3 days and 3 nights.

3. When the period of temporary custody ends, if no grounds exist for initiating legal proceedings against the accused, the person under arrest must be immediately released.

4. The period of temporary custody is counted in the period of temporary detention.

**Article 70: Temporary detention.**

1. An accused or defendant may be temporarily detained in especially serious cases or for crimes subject to 1 year or more of imprisonment as stipulated by the Penal Code, and when there are grounds to believe that he may evade or obstruct the investigation and adjudication or continue to commit crimes.

2. An accused or defendant who is a pregnant woman, nursing a child under 12 months old, or who is old, weak or seriously ill and whose domicile is well known, except for special cases, will not be temporarily detained but other measures of restraint will be applied.

3. Persons with the authority to issue warrants of arrest as stipulated in Article 62 of this code have the right to issue temporary detention orders. The detention orders of persons stipulated in Point d, Item 1, Article 62 of this order must be approved by the organ of control at the same level prior to execution.

4. Agencies issued temporary detention orders must immediately notify the family of the person being temporarily detained and the village, subward or city administration or agency and organization where the person being temporarily detained lives or works.

**Article 71: Period of temporary detention.**

1. The period of temporary detention for investigation cannot exceed 2 months for less serious crimes; and not more than 4 months for serious crimes.

2. In cases involving many complicated details and requiring a longer period for investigation, the head of a people's organ of control at the provincial level and higher and the head of a military organ of control at the military region level and up is authorized to extend the period of temporary detention but not to exceed 2 months for less serious crimes, and not to exceed 4 months for serious crimes. The Chief Procurator and Chief Central Military Procurator may extend the period for serious crimes, but not to exceed 4 months.

When necessary, for crimes of particular danger to national security, the Chief Procurator may further extend the period.

3. If the temporary detention being applied is deemed no longer necessary, the investigating agency must promptly propose that the organ of control cancel the temporary detention and release the person being temporarily detained, or if deemed necessary, to apply other measures of restraint.

When the period of temporary detention expires, the person issuing the temporary detention order must release the person being temporarily detained or, if deemed necessary, to apply other measures of restraint.

**Article 72: System of temporary custody, detention.**

The system of temporary custody and detention differs from the system for those serving prison terms.

Places for temporary custody and detention, and the system of daily regimen, receipt of gifts and family relations will be conducted in accordance with the stipulations of the Council of Ministers.

**Article 73: Caring for the relatives and safeguarding the property of persons in temporary custody or detention.**

1. When the person in temporary custody or detention has minor children under 14 years of age and relatives who are disabled or old and weak, and there is no one to look after them, the organ issuing the temporary custody or detention order will place those people under the care of other relatives or the local administration.

2. In cases where the person in temporary custody or detention owns a house or other assets with no one to watch over them, the organ issuing the temporary custody or detention order will take appropriate methods of maintenance.

3. The organ issuing the temporary custody or detention order will notify the person in temporary custody or detention of the methods being applied.

**Article 74: House arrest.**

The accused or defendant must write a pledge not to leave his residence and must be present upon receipt of a summons. When the accused or defendant must temporarily leave his residence, he must have the permission of the organ that applied the preventative measure.

Other measures of restraint will be applied to the accused or defendant who violates his pledge.

**Article 75: Release on bail.**

1. Individuals or organizations may go bail for the accused or defendant. When going bail, the individual or organization must write a pledge not to allow the accused or defendant to continue to commit crimes, and to ensure the presence of the accused or defendant when summoned by the investigating agency, organ of control or court. When submitting the written pledge, the individual or organization going bail will be informed of the details of the case relevant to the bail. If individuals go the bail, there must be at least two of them.

2. Individuals or organizations going bail must bear responsibility for violating the obligations of the pledge.

**Article 76: Money or other assets deposited as guarantee.**

1. When the accused or defendant is a foreigner, the investigating agency, organ of control or court may allow them to deposit money or valuable assets to guarantee their presence when summoned.

A decision of the investigating agency on depositing money or assets must be approved by the organ of control at the same level prior to implementation.

2. A report must be made on the deposit of money or assets and a copy given to the accused or defendant. The report must state clearly the amount of money and the name and condition of assets deposited.

3. In case the accused or defendant fails to make himself available without a legitimate reason when summoned by the investigating agency, organ of control and court, the money or assets will be transferred to the state fund.

**Article 77: Cancellation or replacement of measures of restraint.**

1. When a court case is dismissed, every measure of restraint will be cancelled.

2. The investigating agency, organ of control or court will cancel the measure of restraint when deemed no longer necessary or may replace it with another measure of restraint.

Measures of restraint approved by an organ of control must be cancelled or replaced by the organ itself.

**Section VI: Reports, Time Limits, Court Costs**

**Article 78: Reports.**

1. When conducting legal proceedings, it is mandatory that reports be made in accordance with uniformly prescribed forms.

A report must clearly indicate the location, day, hour, month and year that legal proceedings were conducted, the starting and ending times, the topic of the legal proceedings, the persons conducting, participating in or concerned with the legal proceedings, and their complaints, requests or suggestions.

2. Trial reports must bear the signatures of the presiding judge and clerk; and reports on other legal proceedings must bear the signature of persons stipulated for each case by this code. Corrected points in the reports must also be confirmed by their signatures.

**Article 79: Calculating time limits.**

1. The time limits stipulated by this code are calculated in hours, days and months. Nighttime is calculated from 2200 to 0600 the following day.

A time limit calculated in days will end at 2400; when calculated in months, the time limit will end on the same day of the following month; if that month has no similar day, the time limit will end on the last day of that month; and if the time limit ends on a non-working day, the first following working day will be considered the last day of the time limit.

2. In case petitions or papers are sent through the postal service, the time limit is calculated in accordance with the postmark. If a petition or paper is sent through a jail supervisory board, the time limit is calculated from the day the jail supervisory board receives that petition or paper.

**Article 80: Restoring a time limit.**

If a time limit is exceeded for a legitimate reason, the organ conducting legal proceedings must restore it.

**Article 81: Court costs.**

Court costs are all expenses for conducting criminal legal proceedings, including compensation paid witnesses, injured parties, experts, interpreters and defendants (in case of appointment by the court), and other expense items.

**Article 82: Responsibility for paying court costs.**

1. Court costs are borne by the convicted person or the state.
2. The convicted person must pay court costs as decided by the court.
3. Under circumstances in which legal proceedings are initiated in a court case at the request of an injured party and the court declares the defendant to be innocent, the injured party must pay the court costs.

**Part Two: Initiating Legal Proceedings and Investigating a Criminal Case**

**Section VII: Initiating Legal Proceedings in a Criminal Case**

**Article 83: Grounds for initiating legal proceedings in a criminal case.**

Legal proceedings in a criminal case may be initiated only when criminal indications have been confirmed. Confirmation of criminal indications may be based on the following grounds:

1. Denunciation by citizens.
2. Intelligence from state agencies or social organizations.
3. Intelligence reported by mass information media.
4. Direct detection by investigating agencies, organs of control, courts, border defense troop units, customs agencies and forest management agencies.
5. Criminal confessions.

**Article 84: Criminal denunciations and warnings.**

Citizens may denounce criminals to an investigating agency, organ of control or court or to other agencies of the state or social organizations. If the denunciation is verbal, the receiving agency must make a written report and obtain the signature of the denouncer.

An agency or organization detecting or receiving a denunciation from a citizen on a criminal must immediately issue a written warning to an investigating agency or organ of control.

**Article 85: Criminal confessions.**

When a criminal comes forward to confess, the receiving agency must formulate a report containing the name, age, occupation, residence and statements of the confessor.

**Article 86: Duty to resolve criminal denunciations and warnings.**

No later than 20 days after receiving a denunciation or warning, investigating agencies or organs of control, within the limits of their responsibility, must inspect and verify the source of information and decide whether or not to initiate legal proceedings in a criminal case.

Under circumstances in which the matter being denounced or warned about involves many complicated details or requires inspection and verification at several locations, the time period required to resolve the denunciation and warning may be longer but not more than 2 months.

**Article 87: Decision to initiate legal proceedings in a criminal case.**

1. When criminal indications are confirmed, the investigating agency or organ of control must issue a decision to initiate legal proceedings in a criminal case. Border defense troop units, customs agencies and forest management agencies will issue a decision on initiating legal proceedings in a court case under the circumstances stipulated in Article 93 of this code.

A court will issue a decision on initiating legal proceedings in a court case if, through adjudication during a trial, a new crime or criminal requiring investigation is detected.

2. A decision to initiate legal proceedings in a criminal case must clearly indicate the time, grounds for initiation and the applicable provisions of the Penal Code.

3. Within a period of 24 hours, the decision to initiate legal proceedings of an organ of control must be sent to an investigating agency to conduct the investigation; the decision to initiate legal proceedings of an investigating agency, border defense troop unit, customs agency or forest management agency must be sent to an organ of control for control of the initiation; and the decision to initiate legal proceedings of a court must be sent to an organ of control for examination and a decision on investigation.

**Article 88: Initiating legal proceedings in a criminal case at the request of an injured party.**

1. The criminal cases stipulated in Item 1, Article 109; Part 1, Item 1, Article 112; Part 1, Item 1, Article 113; Item 1, Article 116; Item 1, Article 117; and Article 126 of the Penal Code will only have criminal proceedings initiated upon the request of an injured party.

2. In case the injured party withdraws his request prior to the opening of the trial, the case must be suspended.

If necessary, even if the injured party withdraws his request, the organ of control or court may still continue to initiate legal proceedings in the case.

**Article 89: Grounds for not initiating legal proceedings in a criminal case.**

Legal proceedings in a criminal case may not be initiated if the following grounds exist:

1. No offense has been committed.
2. The actions do not constitute an offense.
3. The person committing the socially dangerous act has not reached the age of criminal responsibility.
4. There is a judgement or decision that has taken legal effect to suspend the case regarding the person's criminal actions.
5. The statute of limitations for investigation of criminal responsibility has expired.
6. The criminal has been granted amnesty.
7. The person committing a socially dangerous act has died, except when a review of other persons is necessary.

**Article 90: Decision not to initiate legal proceedings in a criminal case.**

1. When there is one of grounds stipulated in Article 89 of this code, the organ empowered to initiate legal proceedings will issue a decision not to initiate legal proceedings in the criminal case; if legal proceedings have already begun, the decision to initiate legal proceedings must be cancelled and a notification of the reason made to the agency, organization or individual denouncing or warning of the crime; and if handling by another method is deemed necessary, the file will be transferred to the concerned organ or organization for resolution.

2. The agency, organization or individual denouncing or warning of the crime may protest the decision not to initiate legal proceedings to the organ of control. A protest against the decision of a lower level organ of control not to initiate legal proceedings may be submitted to a higher level organ of control.

**Article 91: Control over initiation of legal proceedings in a criminal case.**

1. The organ of control supervises compliance with the law and ensures that the initiation of legal proceedings in a criminal case is grounded and legal.

2. In case a decision to initiate legal proceedings of an investigating agency, border defense troop unit, customs organ and forest management organ is groundless, the organ of control will issue a decision cancelling the decision to initiate legal proceedings; and if decision not to initiate legal proceedings in a criminal case of these organs is groundless, the organ of control will cancel that decision and issue a decision to initiate legal proceedings in the case.

3. In case a decision to initiate legal proceedings of a court is groundless, the organ of control will lodge a protest with a higher level court.

**Section VIII: Investigating Agency and General Stipulations on Investigating Procedures**

**Article 92: Investigating agencies and investigative jurisdiction.**

1. Investigative agencies of the People's Police Force and People's Security Force investigate all crimes with the exception of those under jurisdiction of investigative organs in the army and those cases investigated by an investigative organ of a people's organ of control.

2. Investigating agencies in the army investigate crimes under the adjudicative jurisdiction of a military court.

3. Investigating agencies of a people's organ of control will investigate the following cases, when deemed necessary by the head of the organ of control:

- a. When discovered that an investigation has seriously violated the law.
- b. When, during supervision of compliance with the law, clear criminal offenses are detected that need not be transferred to another investigative organ.
- c. When criminal offenses are detected in judicial activities.

The Chief Procurator may assign an investigating agency of an organ of control to conduct investigations in other cases.

4. Investigative agencies are authorized to investigate criminal cases involving crimes perpetrated in their area of jurisdiction. In case the site of the crime cannot be determined, investigation jurisdiction will belong to the investigating agency in the location where the crime is discovered, or the location where the accused resides or is arrested.

5. The specific organization, duties and authority of investigative agencies is stipulated by the Council of State.



**Article 93: Investigative authority of border defense troops, customs, forest management.**

1. When offenses of a level requiring investigation of criminal responsibility are discovered within their sphere of management, border defense troop units, customs agencies and forest management agencies are authorized:

a. For offenses caught in the act, with clear evidence and less severity, to issue a decision to initiate legal proceedings, to conduct an investigation, to transfer the file to an organ of control, and to exercise jurisdiction for a period of 15 days from the day the decision to initiate legal proceedings is issued.

b. For serious or complex offenses, to issue a decision to initiate legal proceedings, to conduct initial investigative activities and to transfer the file to an investigative organ for jurisdiction over a period of 7 days from the day the decision to initiate legal proceedings is issued.

2. The specific duties and authority in investigative activities of border defense troops, customs and forest management is stipulated by the Council of State.

**Article 94: Authority and responsibility of investigating agency heads and investigators.**

1. Heads of investigating agencies may issue a decision to initiate legal proceedings in a court case or against the accused; issue a decision to apply, change or cancel measures of restraint, to track down the accused, to conduct a search, and to replace investigators under the circumstances stipulated by this code; to directly conduct an investigation; and to issue a decision to temporarily or permanently suspend an investigation.

Investigators assigned to investigate a case are empowered to employ the investigative measures stipulated by this code and must bear responsibility for their investigative activities.

2. The decisions and requests made by a head of an investigating agency and an investigator while conducting a case investigation must be implemented by agencies, organizations and citizens.

**Article 95: Integration or separation of criminal cases to conduct investigation.**

Several cases may be integrated into one for investigation in cases of many crimes perpetrated by one accused, many accused participating in one crime or others joining the accused to conceal a crime or failing to denounce a crime stipulated in Articles 246 and 247 of the Penal Code.

Cases may be separated only under truly necessary circumstances when impossible to promptly complete the investigation of all criminal offenses and if that separation will not adversely affect confirmation of the objective and entire truth of the case.

**Article 96: Delegation of investigative authority.**

When necessary, an investigating agency may delegate authority to another investigating agency to conduct a number of investigative activities. A decision to delegate investigative authority must clearly state specific requirements. The entrusted investigating agency is responsible for quickly and completely implementing the assigned tasks.

The delegation of investigative authority between the Socialist Republic of Vietnam and countries that have signed a reciprocal judicial assistance agreement with the Socialist Republic of Vietnam will be conducted as stipulated by that agreement.

**Article 97: Time limit of investigation.**

1. The time limit for investigating a criminal case cannot exceed 4 months from the time that legal proceedings in a criminal case are initiated until the investigation is concluded.

2. If a period of investigation must be extended due to the complex nature of the case, 10 days before the investigation period expires, the investigating agency must submit a written suggestion to the head of the organ of control for an extension. An investigation period extension is stipulated as follows:

a. The heads of provincial level people's organs of control and military region level military organs of control may extend the period of an investigation for not more than 4 months in cases being investigated at their own or a lower level.

b. The Chief Procurator and Chief Military Procurator may extend the period of an investigation twice, each time not to exceed 4 months, in cases being investigated at their own level; and once, not to exceed 4 months, in cases being investigated at the provincial and military region level.

c. Under special circumstances, the Chief Procurator is empowered to extend the period of an investigation one additional time, not to exceed 4 months.

For crimes that could cause serious damage to national security, the Chief Procurator is authorized to direct additional extensions.

3. When the period of investigation ends without proving that the accused has committed a crime, the investigating agency must issue a decision suspending the investigation.

**Article 98: Time limit for investigation reinstatement, supplementary investigation, reinvestigation.**

1. In case an investigation is reinstated as stipulated in Article 140 of this code, the period of investigation cannot exceed 3 months. This period may be extended in accordance with the general procedures stipulated in Item 2, Article 97 of this code, but not in excess of 3 months.

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2. If a court case is returned by an organ of control for supplementary investigation, the period of supplementary investigation cannot exceed 2 months; and if returned by a court, the period of supplementary investigation cannot exceed 1 month. A period of supplementary investigation is calculated from the day the investigating agency receives the court file and investigation request.

3. When a court case is returned for reinvestigation, the period of investigation and any extensions will be accordance with general procedures.

The period of investigation is calculated from the time the investigating agency receives the file and request for reinvestigation.

**Article 99: Handling requests of participants in legal proceedings.**

When participants in legal proceedings request something related to the ongoing case, the investigating agency or organ of control, within the limits of their responsibility, will handle their request and inform them of the results. In case a request is rejected, the investigating agency or organ of control will issue a decision and clearly specify the reason.

**Article 100: Participation of witnesses.**

Witnesses are invited to participate in investigative activities in circumstances stipulated by this code.

A witness is responsible for confirming the contents and results of work conducted by the investigator in his presence and may present his individual view. This view is recorded in the report.

**Article 101: Investigation secrets may not be divulged.**

Investigators and procurators must notify participants in legal proceedings beforehand not to divulge secrets concerning the investigation. This notification must be recorded in the report.

Investigators, procurators or participants in legal proceedings who divulge investigation secrets must, depending on the circumstances, bear responsibility in accordance with Articles 92, 93, 222, 223, 262 and 263 of the Penal Code.

**Article 102: Investigation report.**

1. When an investigation is conducted, a report must be made in accordance with Article 78 of this code.

The person making the report must read it to participants in the legal proceedings, explain to and inform them that they have the right to supplement and add

remarks to the report. These remarks will be recorded in the report. Participants in legal proceedings will co-sign the report with the report preparer.

2. In case a participant in legal proceedings refuses to sign a report, this must be recorded in the report with the reasons clearly specified.

3. If a participant in legal proceedings cannot sign the report due to a physical or mental handicap or for some other reason, the reason must be clearly specified; and must be confirmed by the report preparer and a witness.

An illiterate person will make his mark on the report.

**Section IX: Initiating Legal Proceedings Against and Interrogating the Accused**

**Article 103: Initiating legal proceedings against the accused.**

1. When there are sufficient grounds to confirm that a person has committed a crime, the investigating agency will issue a decision to initiate legal proceedings against the accused.

2. The decision to initiate legal proceedings against the accused will clearly state: the time and location of the decision; the name and position of the person issuing the decision; the name, date of birth, occupation and family status of the accused; the crime and applicable provisions of the Penal Code for which legal proceedings are being initiated against the accused; and other details of the crime.

If legal proceedings are being initiated against the accused for many other crimes, the decision to initiate legal proceedings must clearly specify each charge and the applicable provisions of the Penal Code.

3. The organ issuing a decision to initiate legal proceedings against the accused must give a copy of the decision to the accused and explain to him his rights and duties. The accused will sign the report to acknowledge receipt.

4. The decision to initiate legal proceedings against the accused must be sent immediately to the organ of control at the same level.

**Article 104: Amendment or addendum to a decision to initiate legal proceedings against the accused.**

If any amendment or addendum to the decision to initiate legal proceedings against the accused is deemed necessary, the investigating agency will issue a decision changing or supplementing the decision to initiate legal proceedings. Copies of this decision must be sent immediately to the organ of control at the same level and the accused.

**Article 105: Temporary suspension of the accused from his current position.**

When deemed that continuation of the accused in his current position will create difficulties for the investigation, the investigating agency and organ of control have the right to propose that organs at the level managing the accused temporarily suspend him from his position. Within a period of 7 days, these organs must reply to the investigating agency and organ of control on their proposal.

**Article 106: Summons served on the accused.**

1. A summons served on the accused must specify the name and residence of the accused; the day, hour, month, year and location of his appearance, the person he is to meet, and the consequences of his failure to appear without a legitimate reason.

2. The summons is sent to the village, subward or city administration in the location where the accused resides or to the head of the organ or organization where the accused works for delivery to the accused.

Upon receipt of a summons, the accused must sign his name in acknowledgment of receipt and record the day and hour of receipt. If the accused does not sign in acknowledgment of receipt, a report must be made and sent to the investigating agency. If the accused is absent, the summons may be given to an adult in the family. An accused being held in temporary detention will receive the summons through the jail supervisory board.

3. The accused must present himself in accordance with the summons. In case the accused is absent without a legitimate reason or shows indications of fleeing, the investigating agency will issue a decision to escort him. This decision must be read to the accused before escorting him.

**Article 107: Interrogating the accused.**

1. Interrogation of the accused must be conducted by an investigator immediately after the decision to initiate legal proceedings. The accused may be interrogated where the investigation is being conducted or at his home.

Prior to the interrogation, the investigator must read the decision to initiate legal proceedings against the accused and explain to the accused his rights and obligations.

If the case involves several accused, they must be interrogated individually and not allowed to contact each other. They may be allowed to write a statement.

2. Interrogations will not be conducted at night except when delay is impossible, but the reasons must be clearly recorded in the report.

3. An investigator who extorts evidence from or uses physical punishment against the accused must bear responsibility in accordance with Articles 234 and 235 of the Penal Code.

**Article 108: Reporting interrogation of the accused.**

1. A report on interrogation of the accused must be made in accordance with Article 78 of this code.

A report must be made for each interrogation session. The report must fully record statements made by the accused and all questions and answers.

2. After an interrogation, the investigator will read back the report to the accused or have him read it himself. Any addenda or corrections to the report must be certified in writing by both the accused and the investigator. If the report has many pages, the accused will sign each page. In case the accused writes his own statement, the investigator and the accused must co-sign the statement.

If the interrogation is recorded on tape, it must upon completion be played back to both the accused and the investigator. The report must contain the contents of the interrogation and the accused and investigator must both sign in confirmation.

In case the interrogation is conducted through an interpreter, the investigator must explain the rights and duties of the interpreter and at the same time inform the accused of his right to request a different interpreter. The interpreter and the accused must co-sign each page of the interrogation report.

3. When the defender and lawful representative of the accused are present during the interrogation, the investigator must explain their rights and obligations during the interrogation. The accused, defender and lawful representative must all sign the interrogation report.

**Section X: Obtaining Statements of Witnesses and Injured Parties, Confrontation and Identification**

**Article 109: Subpoenaing witnesses.**

1. A witness subpoena must clearly specify the full name and residence of the witness; the day, hour, month, year and location to be present; the person to be met; and the consequences of failing to appear without a legitimate reason.

2. A subpoena will be delivered directly to the witness or through the village, subward or city administration or agency and organization where the witness resides or works. These agencies and organizations are responsible for creating conditions for the witness to fulfill his obligations.

In all cases, delivery of a subpoena must be acknowledged in writing.

3. A subpoena for a person under 16 years of age will be delivered to his parents or other lawful representative.

**Article 110: Obtaining statements from witnesses.**

1. A statement may be taken from a witness at the site of the investigation or at his home.

2. If the case involves many witnesses, separate statements must be taken from each witness and witnesses will not be allowed to contact each other during the period the statements are being taken.

3. Before taking a statement, the investigator must explain to the witness his rights and obligations. This must be recorded in the report.

4. Before asking about the substance of the case, the investigator must confirm the relationships between the witness and the accused and the injured party and other details concerning the person of the witness. The investigator should request the witness to relate or write down the things he knows about the case and only then ask questions. Questions of an implicative nature will not be asked.

5. When taking a statement from a person under 16 years of age, his parents, other lawful representative or teacher must be invited to attend.

**Article 111: Report recording the witness statement.**

A report recording the witness statement must be made as stipulated in Articles 78 and 108 of this code.

**Article 112: Taking a statement from the injured party.**

A statement is taken from the injured party as stipulated in Articles 109, 110 and 111 of this code.

**Article 113: Confrontation.**

1. In case of a contradiction between the statements of two or several persons, the investigator will confront them.

2. If a witness or the injured party participate in a confrontation, the investigator must explain the consequences of refusing or avoiding to make a statement or of intentionally making a false statement. This explanation must be recorded in the report.

3. When a confrontation begins, the investigator will query the relationships between participants in the confrontation and then ask about the details that should be clarified. After listening to the statements in the confrontation, the investigator may individually pose additional questions to each person.

The investigator may also have participants in the confrontation question each other; and the questions and replies of these persons must be included in the report.

Only after participants in the confrontation have completed their statements will their previous statements be recalled.

4. A confrontation report must be made as stipulated in Articles 78 and 108 of this code.

**Article 114: Identification.**

1. When necessary, the investigator may introduce persons, material objects or photographs to the witness, injured party or accused for identification.

The investigator must ask the person making the identification beforehand what details, traces and characteristics will assist them in their identification.

2. The persons, material objects or photographs introduced for identification must number at least three each and be similar in appearance. When corpses are identified, this principle does not apply.

Under special circumstances, a person may be identified through his voice.

3. If a witness or injured party is making the identification, the investigator must first explain the consequences for refusing or avoiding to make a statement or intentionally making a false statement. This explanation must be included in the report.

4. While conducting an identification, the investigator may not pose questions of an implicative nature. After the identifier confirms a person, material object or photograph introduced for identification, the investigator will ask him to explain the traces or characteristics of the person, material object or photograph upon which his identification was based.

The identification must be conducted in the presence of a witness.

5. An identification report must be made in accordance with Articles 78 and 108 of this code. The report must clearly specify the identification made by the identifier and the persons introduced for identification; the characteristics of the material object or photography introduced for identification; and the statements and presentations of the witness.

**Section XI: Search, Impoundment, Temporary Custody and Declaration of Assets**

**Article 115: Grounds for searching a person, residence, location, article, letter, parcel or other mail item.**

1. A search of a person, residence or location may be conducted if grounds exist for believing that on a person or in his home or location, there are tools and other

means of committing a crime, articles and assets acquired through a crime, or other articles and assets relevant to a court case.

A search of a residence or location may also be conducted when necessary to find a wanted person.

2. When necessary to gather documents or articles related to a court case, letters, telegrams, parcels and other postal items may be checked.

**Article 116: Authority to issue a search order.**

1. The persons stipulated in Item 1, Article 62 of this code are empowered to issue a search order under all circumstances. The search order of the persons stipulated in Point d, Item 1, Article 62 of this code must be approved by the organ of control at the same level prior to execution.

2. In case delay is impossible, the persons stipulated in Item 2, Article 63 of this code have the right to issue a search order. Within 24 hours after a search is completed, the person issuing the search order must submit a written report to the organ of control at the same level.

**Article 117: Body searches.**

1. When beginning a body search, the search order must be read to and by the concerned party; and the rights and obligations of the concerned party and others present must be explained.

The person conducting the search must request the concerned party to present articles pertaining to the case, and if he refuses, a search is conducted.

2. Body searches must be conducted and witnessed by people of the same sex.

3. Body searches may be conducted without a search order during an arrest or when there are grounds affirming that someone present at the site of a search has hidden an article requiring impoundment on his person.

**Article 118: Search of residence or location.**

1. The search of a residence, location or place of work will be conducted as stipulated in Articles 115, 116 and 117 of this code.

2. When a residence or location is searched, the owner or an adult member of his family, a representative of the village, subward or city administration, and a neighbor must be present as witnesses; in case the object of the search or members of his family are intentionally absent, flee or have been away a long time and the search cannot be delayed, a representative of the administration and two neighbors must be present as witnesses.

3. The search of a residence cannot be made at night except when delay is impossible and the reason must be clearly stated in the report.

4. When the place of work of an individual is searched, that person must be present except for cases in which delay is impossible and the reason must be clearly recorded in the report.

The search of a place of work must be witnessed by a representative of the agency or organization.

5. When a residence or location is being searched, those present cannot arbitrarily leave the place being searched, and cannot contact or exchange opinions with each other or others until the search is completed.

**Article 119: Impoundment of letters, parcels and other postal items at the post office.**

When necessary to impound letters, telegrams, parcels and other postal items at the post office, the investigating agency will issue an impoundment order. This order must be approved by the organ of control at the same level prior to execution, except when delay is impossible and the reasons must be recorded in the report and the organ of control at the same level notified immediately after the impoundment is made.

The person executing an impoundment order must notify the person in charge of the concerned postal agency prior to executing the impoundment. The person in charge of the concerned postal agency must assist the person executing the impoundment order in fulfilling his duty.

When a letter, telegram, parcel, or other postal item is impounded, a representative of the postal agency must serve as a witness and place a written confirmation in the report.

The organ issuing an impoundment order must notify the addressee of the impounded letter, telegram, parcel or other postal item, except when such notification will obstruct the investigation in which case the person issuing the impoundment must make the notification immediately after the obstacle no longer exists.

**Article 120: Temporary custody of articles and documents during searches.**

During a search, the investigator must take temporary custody of articles that are material objects or documents directly relevant to the case. Those articles for which storage or circulation are forbidden must be impounded

and transferred immediately to an authorized management agency. In sealing is necessary, it must be done in the presence of the owner or a family representative, a representative of the administration and a witness.

A report must be made of articles and documents taken into temporary custody during a search. Four copies of the temporary custody report must be made: one for the owner of the article or document; one for the court file; one for the organ of control at the same level; and one for the agency managing the articles or documents being held in temporary custody.

**Article 121: Inventory of assets.**

1. An inventory of assets is only applicable to an accused or defendant in a crime stipulated by the criminal code as possibly resulting in confiscation of assets or payment of a monetary fine, as well as to those liable for paying damages as stipulated by the code.

The authorities stipulated in Item 1, Article 62 of this code have the right to issue an order for inventory of assets. The inventory order of persons stipulated in Point d, Item 1, Article 62 of this code must be approved by the organ of control at the same level prior to execution.

2. Only that portion of assets equal to the level liable to confiscation, fine or payment of damages will be inventoried.

The inventoried assets are entrusted to the owner or his relatives for safekeeping. A person entrusted with safekeeping who transfers, switches, conceals, or destroys inventoried assets must bear responsibility in accordance with Article 244 of the Penal Code.

3. An inventory of assets must be witnessed by the person involved or an adult member of the family, a representative of the village, subward or city administration, and a neighbor. The person conducting an inventory of assets must make a report clearly stating the name and condition of each inventoried asset. The report must be made as stipulated in Article 78 of this code, and read to and signed by the person involved and others present. Complaints of the person involved are noted in the report, along with his signature of confirmation and that of the person conducting the inventory of assets.

Three copies of the inventory report are made: one is given immediately to the involved person after the inventory is completed; one is sent to the organ of control at the same level; and one copy is placed in the court file.

4. When deemed that an inventory is no longer necessary, the authorities stipulated in Item 1 of this article must promptly issued a decision cancelling the inventory order.

**Article 122: Responsibility for safeguarding articles, documents, letters, telegrams, parcels and other postal items that are impounded, placed in temporary custody or sealed.**

The articles, documents, letters, telegrams, parcels and other postal items impounded, placed in temporary custody or placed under seal as stipulated in Articles 57, 119 and 120 of this code must be safeguard and maintained intact.

A person assigned to the safeguarding task who breaks the seal, uses, transfers, switches, conceals or destroys the assets he is assigned to safeguard must bear responsibility in accordance with Article 244 of the Penal Code.

**Article 123: Report on search for, impoundment and temporary custody of articles, documents, letters, telegrams, parcels, and other postal items.**

A report must be made on searches, impoundment and temporary custody as stipulated in Article 78 of this code.

**Article 124: Responsibility of persons issuing and executing orders for searches, asset inventory and impoundment or temporary custody of articles, documents, letters, telegrams, parcels and other postal items.**

A person issuing an order and a person executing an order to conduct a search, inventory assets and impound or take temporary custody of articles, documents, telegrams, parcels and other postal items contrary to the law will, depending on the circumstances, be disciplined or must bear responsibility as stipulated by the Penal Code.

**Section XII: Examining a Crime Scene, Examining a Body, Investigative Experimentation, Expert Evaluation**

**Article 125: Examining a Crime Scene.**

1. An investigating agency will conduct an examination of the site where a crime occurred or was discovered to detect traces of the crime and material evidence and to clarify details of significance to the case.

2. A crime scene may be examined before initiating legal proceedings in a criminal case. Prior to conducting an examination, the investigator must inform the organ of control at the same level. The examination must be conducted in the presence of witnesses; with the possible participation of the accused, the injured party, witnesses and invited specialists.

3. When examining a crime scene, the investigator will take photographs, make diagrams and write descriptions, take measurements, erect models, collect and examine on-site traces of the crime, articles and documents related to the case, and clearly record results of the examination in the crime scene examination report.

In case immediate examination is impossible, impounded articles and documents must be safeguarded and maintained in their original condition or placed under seal and delivered to the place where an examination will be conducted.

**Article 126: Examining a body.**

When a body is discovered, an investigator must conduct an examination with the participation of a coroner and a witness must be present.

In case a body must be exhumed, a decision from an investigating agency is necessary and the victim's family must be notified. An exhumation must be conducted with the participation of a coroner.

When necessary, an expert may be subpoenaed, and a witness is required.

In all cases, the organ of control must be notified before an exhumation is conducted.

**Article 127: Examination of traces on the person.**

1. The investigator may examine the persons of those arrested, held in temporary custody or accused, the injured party and witnesses to detect traces of a crime or other traces of significance to the case. When necessary, a forensic expert may be solicited.

2. Examination of an individual's person must be conducted and witnessed by people of the same sex. If necessary, a doctor may participate.

The dignity and health of the individual being examined cannot be violated.

**Article 128: Investigative experimentation.**

1. To inspect and confirm documents and details of significance to the case, the investigating agency has the right to conduct an investigative experiment by having the crime scene reestablished, and the actions, conditions and all other details of a certain incident reenacted, and to conduct other necessary experimental activities. When deemed necessary, photographs are taken, measurements made and diagrams drawn.

2. Witnesses are required when conducting an investigative experiment. When necessary, persons in temporary custody, the accused, injured party and witnesses may also participate.

The dignity and honor cannot be violated or the health adversely affected of participants in an investigative experiment.

**Article 129: Reports on examination of a crime scene, examination of a body, check for traces on the person and investigative experimentation.**

When a crime scene examination, body examination, check for traces on the person or an investigative experiment is conducted, a report must be made as stipulated in Article 78 of this code.

**Article 130: Solicitation of experts.**

1. When there are issues requiring confirmation in accordance with Item 5, Article 44 of this code as well as when deemed necessary, the head of the investigating agency will issue a decision soliciting an expert.

2. A decision to solicit an expert must clearly specify the issue for which an expert evaluation is required; the full name of the person being solicited or and name of the agency conducting the expert evaluation; and the rights and obligations of the expert as stipulated in Article 44 of this code.

**Article 131: Conduct of Expert Evaluation.**

An expert evaluation may be conducted at the evaluation agency or at the site of the court investigation immediately after a decision is made to solicit an expert.

An investigator has the right to participate in the expert evaluation but must first notify the expert.

**Article 132: Contents of an expert's conclusion.**

1. The contents of an expert's conclusion must specify: the time and location of the expert evaluation; the full name, educational level and professional level of the expert; participants in the expert evaluation; traces, articles, documents and all things evaluated; and the methods applied and answers to issues posed with the specific grounds.

2. To clarify or supplement the contents of an expert's conclusion, an investigating agency may ask additional experts about necessary details and may decide to have the expert include an addendum to his conclusion or conduct a reevaluation.

**Article 133: Rights of the accused regarding the expert's conclusion.**

1. After an expert evaluation has been made, the accused may, upon request, be notified of the contents of the expert's conclusion.

The accused may submit his views on the expert's conclusion, and request that the expert add an addendum to his conclusion or conduct a reevaluation. These facts must be noted in the report.

2. In case the investigating agency denies the request of the accused, it must be clearly specified and the accused must be notified.

**Article 134: Expert evaluation addendum or reevaluation.**

An evaluation addendum or reevaluation will be conducted in accordance with general procedures.

A reevaluation must be conducted by a different expert.

**Section XIII: Suspending Investigation, Concluding Investigation**

**Article 135: Suspending investigation.**

1. When an accused is mentally ill or has some other dangerous illness certified by a forensic evaluation board, the investigation may be suspended before its time limit expires. In case the accused cannot be confirmed or the location of the accused is not clearly known, an investigation can only be suspended after its time limit has expired.

If a case has many accused and the reason for suspending an investigation is not related to all of them, a suspension may be made for one individual accused.

If the location of the accused is unknown, an investigating agency must issue a decision to track him down before suspending the investigation.

2. An investigating agency issuing a decision to suspend investigation must send this decision to the organ of control at the same level and notify the accused and the injured party.

**Article 136: Tracking down the accused.**

A wanted decision must clearly specify the full name, age, residence, and characteristics for identifying the accused, have a photograph affixed if available, and specify the crime for which the accused is being charged.

A wanted decision must be placed in the various means of mass communications so everyone may detect, apprehend and hold the wanted person.

**Article 137: Concluding an investigation.**

1. An investigation may be concluded when the investigating agency issues a decision suggesting prosecution or to suspend the investigation.

2. In case the investigating agency suggests prosecution, the court file is transferred to the organ of control and the investigating agency must immediately notify the accused and defender.

**Article 138: Suggestion to prosecute.**

1. When sufficient evidence exists to confirm a crime and an accused, the investigating agency will make an investigative conclusion and suggest prosecution. The investigative conclusion will present the evolution of criminal actions, specify evidence proving the offense and views proposed for resolving the case, and clearly indicate the reasons and grounds.

The investigative conclusion and suggestion to prosecute are forwarded with the court file to the organ of control at the same level.

2. Accompanying the investigative conclusion will be a record of the investigation period and measures of restraint applied, clearly specifying the period of temporary custody or detention, material evidence, civil litigation, and methods used to ensure payment of fines and damages, and confiscation of assets, if any.

3. An investigative conclusion must include the day, month, year, full name, position and signature of the person making the conclusion.

**Article 139: Halting an investigation.**

1. An investigating agency will issue a decision to halt an investigation under the following circumstances:

- a. One or more of the grounds stipulated in Article 89 of this code.
- b. The time period of the investigation has expired without proving that the accused has committed the crime.

2. A decision to halt an investigation must clearly specify the time and location the decision was issued, the reason for halting the investigation, cancellation of measures of restraint, the return of temporarily impounded articles, if any, and other related issues.

The investigating agency must send the decision to halt an investigation to the organ of control at the same level and immediately notify the accused and injured party.

If a case involves several accused and the grounds for halting the investigation do not relate to all of them, the investigation may be halted for each individual accused.

3. Under the circumstances stipulated in Part 1, Item 1, Article 48 of the Penal Code, an investigating agency may issue a decision to halt a case investigation and transfer the file to a state agency or social organization for disposition.

**Article 140: Restoring an investigation.**

1. When reasons exist for cancelling a decision to halt or suspend an investigation, the investigating agency will issue a decision restoring the investigation, if the criminal statute of limitations has not expired. This decision must be sent to the organ of control at the same level.



2. If an investigation is halted in accordance with Points 5 and 6, Article 89 of this code but the accused does not agree and requests a reinvestigation, the investigating agency or organ of control will issue a decision restoring the investigation.

#### **Section XIV: Control, Investigation of Decision to Prosecute**

##### **Article 141: Duties, rights of organ of control in investigative activities.**

1. An organ of control will control compliance with the law and exercise of prosecutorial rights, and ensure that an investigation is objective, comprehensive and complete. An organ of control must promptly detect violations of the law during the investigation process and must set forth methods of overcoming them.

2. An organ of control is obligated to:

- a. Apply every measure stipulated by this code so that every criminal action is promptly investigated and handled, without allowing the guilty to escape or the innocent to be unjustly accused or punished.
- b. Ensure that no one arrested or held in temporary custody or detention is deprived of his civil rights, or has his life, property, honor or dignity violated contrary to the law.
- c. Ensure that investigative activities are conducted as stipulated by this code. In an investigation, it is necessary to collect all evidence confirming guilt or innocence, to clarify details aggravating or extenuating the responsibility of the accused, and to find the reasons for and conditions of the crime.
- d. Ensure that an investigation for criminal responsibility of an accused has grounds and is lawful.

3. An organ of control is empowered to:

- a. Control initiation of legal proceedings, self-initiate legal proceedings in a criminal case and transfer the case to an investigating agency to request that an investigation be conducted; and to directly investigate under the circumstances stipulated in Item 3, Article 92 of this code.
- b. Approve or disapprove the decision of an investigating agency as stipulated in this code.
- c. Decide to apply, change or cancel measures of restraint; and request an investigating agency to track down the accused.
- d. Issue investigation requirements or the return of a court file for an addendum to investigation requirements; and to require that the investigating agency supply essential details on the crime and the actions in violation of the law of an investigator, if any.
- d. Control searches, examinations and interrogations of the accused and other investigative activities of the investigating agency; and to directly interrogate the accused if deemed necessary.

e. Decide to prosecute, dismiss or suspend an investigation, to transfer the case, and to cancel an unlawful decision of the investigating agency.

g. Request that the head of the investigating agency replace an investigator violating the law while conducting an investigation.

4. Investigating agencies are responsible for executing the requirements and decisions of the organ of control. If not agreeable to the requirements and decisions stipulated in Points b, c and e, Item 3 of this article, the investigating agency must still execute them, but is authorized to suggest a direct examination and decision by the head of the organ of control at the next higher level. Within a period of 20 days, the head of the organ of control at the next higher level must examine and resolve the suggestion of the investigating agency.

##### **Article 142: Decision of organ of control after investigation is concluded.**

1. Within a period of not more than 30 days after receiving a court file and investigative conclusion, an organ of control must issue the following decisions:

- a. To prosecute the accused with an indictment.
- b. To return the file for an addendum to the investigation.
- c. To dismiss or suspend the court case.

When necessary, an organ of control at a higher level may directly call for a postponement but not in excess of 30 days.

The organ of control must notify the accused and defender of the decisions above. A copy of the indictment or decision to halt or suspend an investigation must be given to the accused. The defender may read the indictment, copy essential facts and make proposals or requests.

2. In case the accused is being temporarily detained and the period of temporary detention has expired, if deemed necessary to continue detention to complete the indictment, the organ of control may issue another temporary detainment order but not to exceed 30 days.

3. In case of prosecution, during a period of 3 days from the time the decision is issued, the organ of control must send the file and the decision to prosecute to the court.

##### **Article 143: Indictment.**

1. The contents of the indictment must clearly specify the day, hour, month, year and location of the crime; stratagems, objectives and consequences of the crime and other important details; evidence confirming the guilt of the accused, and any aggravating or extenuating details; and the physical condition of the accused and every other detail of significance to the case.

The indictment's conclusion must clearly specify the charge and the applicable provision of the Penal Code.

2. A person making an indictment must specify the day, month and year the indictment was made; and place his full name, position and signature on the indictment.

**Article 144: Complaints about the activities of investigators, procurators.**

1. Complaints about the activities of investigators may be sent to the investigating agency or the organ of control at the same level.

Complaints about the activities of procurators may be sent to the head of that organ of control or the organ of control at the next higher level. If the complaint is made verbally, a written report must be made with the signature of the person making the complaint and the person receiving it.

2. A complaint must be resolved within a period of 30 days from its receipt. In case a complaint is rejected, a clear reason must be stated.

**Part Three: Preliminary Trial Adjudication**

**Section XV: Jurisdiction of Courts at Various Levels**

**Article 145: Adjudicative jurisdiction of courts at various levels.**

1. People's courts at the district level and military courts at the area level will conduct preliminary trials for crimes subject to sentences of 7 years imprisonment or more as stipulated by the Penal Code with the exception of the following crimes:

- a. Crimes particularly endangering and violating national security.
- b. The crimes stipulated in Articles 89, 90, 91, 92, 93, 101 (Item 3), 102, 179, 231 and 232 of the Penal Code.

2. People's courts at the provincial level and military courts at the military region level will conduct preliminary trials in criminal cases for crimes not within the jurisdiction of people's courts at the district level and military courts at the area level, or cases within the jurisdiction of lower level courts that they elevate for adjudication.

3. The People's Supreme Criminal Court and Central Military Court will simultaneously conduct the preliminary and final trials of especially serious and complex cases.

4. Military courts will prosecute defendants within their adjudicative jurisdiction as stipulated by the law.

**Article 146: Territorial jurisdiction.**

1. The court with jurisdiction to adjudicate a case is the court located where the crime was committed. If the location of a crime cannot be confirmed, the court with adjudicative jurisdiction is the court located where the investigation was concluded.

2. If the defendant in a crime committed in a foreign country is prosecuted in Vietnam, the provincial level people's court in the location of the defendant's last domestic residence will adjudicate. If the defendant's last domestic residence cannot be confirmed, depending on the circumstances, the Chief Justice of the People's Supreme Court will issue a decision assigning adjudication to the people's court of Hanoi or Ho Chi Minh City.

If the defendant in a crime committed in a foreign country is under the jurisdiction of a military court, a military region level military court or higher will adjudicate, in accordance with a decision of the Chief Justice of the Central Military Court.

**Article 147: Adjudicative authority for crimes committed aboard aircraft or ships of the Socialist Republic of Vietnam while operating outside the airspace or territorial waters of Vietnam.**

Crimes occurring aboard aircraft or ships of the Socialist Republic of Vietnam while operating in foreign countries will fall under the jurisdiction of the Vietnamese court at the first airfield or port where the aircraft or ship returns, or where the aircraft or ship is registered.

**Article 148: Prosecution of defendants committing crimes within the jurisdiction of courts at other levels.**

When a defendant has committed many crimes, some of which fall within the adjudicative jurisdiction of a higher level court, the higher level court will adjudicate the entire case.

**Article 149: Transferring a case.**

When deemed that a court case does not fall under its jurisdiction, a court will transfer the case to the court with adjudicative jurisdiction. The transfer of a case outside the sphere of a province, municipality directly under the jurisdiction of the central government, or equivalent administrative unit, and outside the sphere of a military region will be decided by a people's court at the provincial level or a military court at the military region level.

A case may only be transferred to another court before it has been adjudicated. Under these circumstances, the case transfer is decided by the presiding judge. If a case falls under the jurisdiction of a military court or a court

at a higher level, it will be transferred to the court with jurisdiction even if adjudication has begun. Under these circumstances, the case transfer must be the decision of the jury.

The organ of control at the same level must be notified of a case transfer.

**Article 150: Handling disputes over adjudicative jurisdiction.**

1. Disputes over adjudicative jurisdiction will be decided by the presiding judge at the next highest level.
2. A dispute over adjudicative jurisdiction between a people's court and a military court will be decided by the Chief Justice of the People's Supreme Court.

**Section XVI: Adjudicative Preparation**

**Article 151: Time period of adjudicative preparation.**

1. After receiving a case file, the judge assigned to preside over the trial has a duty to examine the file; to resolve the complaints and requests of persons participating in the legal proceedings and to perform other tasks necessary for beginning the trial.
2. Within a period of 45 days for less serious crimes and 3 months for serious crimes from receipt of the case file, the judge must issue one of the following decisions:
  - a. To take the case to trial.
  - b. To return the file for supplementary investigation.
  - c. To suspend the case.
  - d. To dismiss the case.

For complex cases, the presiding judge of the court at the next highest level may decide to extend the period of adjudicative preparation for an additional month.

After deciding to bring a case to trial, the trial must begin within a period of 15 days; if a legitimate reason exists, the trial may begin within a period of 30 days.

For cases returned for supplementary investigation, within a period of 15 days after receiving the file back, the judge must issue a decision for taking the case to trial.

**Article 152: Application, change or cancellation of measures of restraint.**

After receiving a file, the judge must decide on the application, change or cancellation of measures of restraint. The application, change or cancellation of temporary detention measures is decided by the presiding judge or deputy presiding judge of a court at the same level.

The period of temporary detention, counting from the day the court receives the file and indictment to the day the adjudicative trial begins, cannot exceed 45 days in a case prosecuted by a court at the district level and a military court at the area level; and 3 months in a case prosecuted by a people's court at the provincial level and above, and a military court at the military region level and above. In special cases, the court at the next higher level is empowered to extend the period one time but not in excess of 1 month.

In cases of a simultaneous preliminary and final trial prosecuted by the People's Supreme Criminal Court or the Central Military Court, the Chief Justice of the People's Supreme Court may extend the period but not in excess of 1 month.

**Article 153: Contents of decision to take a case to trial.**

The decision to take a case to trial must clearly specify:

1. The full name, day, month and year of birth, place of birth, occupation and residence of the defendant.
2. The charges and provisions of the Penal Code guiding the organ of control regarding the defendant's actions.
3. The day, hour, month and location that the trial will begin.
4. Whether the case will be prosecuted in public or in camera.
5. The full names of the judge, people's jurors and clerk of court.
6. The full name of the procurator exercising prosecutorial authority during the trial.
7. The full name of the defender, if any.
8. The full name of the interpreter, if any.
9. The full name of persons subpoenaed for questioning during the trial.
10. Material evidence that must be introduced for examination during the trial.

**Article 154: Decision to return file for supplementary investigation.**

1. A judge may issue a decision to return the file to an organ of control for supplementary investigation in the following cases:
  - a. When deemed necessary to further examine important evidence regarding the case that cannot be supplemented in the trial.
  - b. When there are grounds to believe that the defendant has committed other crimes or there are accomplices.
  - c. When a serious violation of the legal proceedings is detected.

The issues requiring supplementary investigation must be clearly specified in the decision requesting a supplementary investigation.

2. If results of the supplementary investigation lead to discontinuance of the case, the organ of control will issue a decision dismissing the case and will notify the court.

In case the organ of control cannot supplement the issues requested for supplementation by the court and the decision to prosecute remains intact, the court will continue adjudication.

**Article 155: Decision to suspend or dismiss a case.**

A judge will issue a decision to suspend a case when there are grounds as stipulated in Article 135; and a decision to dismiss a case when there are one of the grounds stipulated in Points 3, 4, 5 and 7, Article 89 of this code.

A decision to dismiss a case must clearly specify the contents stipulated in Item 2, Article 139 of this code.

**Article 156: Withdrawal of decision to prosecute by organ of control.**

If deemed there are grounds as stipulated in Article 89 of this code or when there are grounds for waiving the criminal responsibility of the defendant, the organ of control will withdraw the decision to prosecute before the trial begins and will suggest that the court dismiss the case.

**Article 157: Delivery of court decisions.**

1. Copies of the decision to take a case to trial will be delivered to the defendant and his lawful representative and defender at the latest 10 days before the trial begins.

Under circumstances in which the defendant being prosecuted is absent, copies of the decision to take a case to trial and indictment will be delivered to the defender or lawful representative of the defendant; and copies of the decision to take a case to trial must also be posted in the offices of the village, subward or city office where the defendant last resided or worked.

2. Copies of court decisions to suspend or dismiss a case must be delivered to the defendant, defender, injured party and lawful representative of the defendant; with written notices to others participating in the legal proceedings.

**Article 158: Subpoena of persons for questioning during the trial.**

Based on a decision to bring a case to trial, the judge will subpoena the persons needed for questioning during the trial.

**Section XVII: General Stipulations on Legal Proceedings During Trial**

**Article 159: Direct, verbal and continuous adjudication.**

1. The court must directly confirm the details of a case by questioning and listening to the views of the defendant, injured party, civil plaintiff, civil defendant, persons with

rights and interests relevant to the case, witnesses and experts; examining the evidence; and listening to the defense. A judgement may be based only on evidence examined during a trial.

2. The adjudication must be conducted continuously, except for rest breaks.

**Article 160: Elements of a preliminary trial jury.**

A preliminary trial jury comprises one judge and two people's jurors. In cases of serious or complex nature, the jury may comprise two judges and three people's jurors.

In cases in which the defendant is being prosecuted for crimes for which the highest sentence is death, the jury will comprise two judges and three people's jurors.

The presiding judge of the trial directs and maintains the discipline of the trial.

**Article 161: Replacing a member of an jury under special circumstances.**

1. Members of a jury must adjudicate the case from the beginning to the end.

2. During the adjudicative process, if a judge or people's juror cannot continue participation in the adjudication, the court may still adjudicate the case if there is an alternate judge or people's juror. Only if the alternate judge or people's juror was present at the beginning may he participate in the adjudication.

3. In case there is no alternate judge or people's juror for a replacement or if replacement of the trial presiding judge is necessary, the case must be retried from the beginning.

**Article 162: Presence of the defendant at the trial.**

1. The defendant must be present at the trial in accordance with a court summons; if absent without a legitimate reason, he must be escorted; and if the defendant is absent for a legitimate reason, the trial must be postponed.

If the defendant is mentally ill or has some other dangerous disease, the jury will suspend the case until the defendant recovers.

If the defendant evades trial, the jury will suspend the case and request that an investigating agency track him down.

2. A court may only try a defendant in absentia under the following circumstances:

a. The defendant evades trial and the search is without result.

b. The defendant is in a foreign country and cannot be summoned to the trial.

c. If the defendant's absence does not obstruct the adjudication and a valid summons has been delivered to him.

**Article 163: Defendant control at a trial.**

1. A defendant being held in temporary detention may have contact during the trial only with his defender. Contact with others requires permission from the presiding judge of the trial.

2. A defendant not under temporary detention must be present during a trial throughout the judgement period.

**Article 164: Presence of the procurator.**

1. A procurator from the organ of control at the same level must participate in the trial. For cases of a serious or complex nature, two procurators may participate together in the trial.

2. If the procurator is absent or replaced, the jury will postpone the trial and immediately inform the organ of control at the same level.

**Article 165: Presence of the defender.**

The defender is obligated to participate in the trial. If the defender is absent but has previously submitted a written defense, the court will still begin the trial.

Under circumstances in which the defender as stipulated in Item 2, Article 37 of this code is absent, the jury must postpone the trial.

**Article 166: Presence of the injured party, civil plaintiff, civil defendant and persons with lawful rights and interests relevant to the case or their lawful representatives.**

1. If the injured party, civil plaintiff, civil defendant and persons with lawful rights and interests relevant to the case or their lawful representatives are absent, depending on the circumstances, the jury will decide to either postpone the trial or continue adjudication.

2. If deemed that the absence of the injured party, civil plaintiff or civil defendant will only obstruct the resolution of damage payment, the jury may separate the payment of damages for later adjudication in accordance with the procedures of civil litigation.

**Article 167: Presence of witnesses.**

Witness participate in a trial to clarify details of the case. If witnesses are absent but previously submitted statements to the investigating agency, the presiding judge at

the trial will publish those statements. If a witness to important issues is absent, depending upon the circumstances, the jury will decide either to postpone the trial or continue adjudication.

**Article 168: Presence of experts.**

1. An expert will participate in a trial when subpoenaed by the court.

2. If an expert is absent, depending upon the circumstances, the jury will either postpone the trial or continue adjudication.

**Article 169: Organ of control withdraws decision to prosecute or fixes lesser charges at a trial.**

After trial questioning, the procurator may withdraw a portion or all of the decision to prosecute, or fix a lesser charge, but the jury must still adjudicate the entire case.

**Article 170: Limitations of adjudication.**

A court may only prosecute defendants and actions in accordance with the charges that the organ of control and court decided to bring to trial.

**Article 171: Subject of a trial.**

1. Before beginning a trial, the clerk must disseminate the subject.

2. Everyone in the courtroom must have an attitude of respect for the jury, maintain order, and comply with the directions of the presiding judge.

3. Everyone in the courtroom must stand when the jury enters the courtroom. Only the persons subpoenaed by the court for questioning may make a statement and anyone wishing to do so must have the permission of the presiding judge. The person making a statement must stand when questioned except for reasons of health in which case the presiding judge gives permission to give the statement while seated.

4. Persons under 16 years of age may not enter the courtroom except when subpoenaed by the court for questioning.

**Article 172: Measures taken against persons who violate trial order.**

Persons violating trial order may, depending upon the circumstances, be warned, fined, forced to leave the courtroom or arrested by the presiding judge.

The people's police are obligated to protect the trial and to execute the orders of the presiding judge on forcibly ejecting from the courtroom or arresting anyone who disturbs the order of the trial.

**Article 173: Issuing the verdict and decisions of the court.**

1. The court verdict decides whether the defendant is guilty or not guilty, the sentence, and other judicial measures. The verdict must be discussed and approved in the consultation room.

2. A decision to replace a member of the jury, procurator, expert, interpreter or court reporter; or to transfer a case, request supplementary investigation, suspend or dismiss a case, and to arrest and detain or release a defendant must be discussed and approved in the consultation room and be put into written form.

3. Decisions on other issues are discussed and approved by the jury in the consultation room and need not be put into written form but must be recorded in the trial report.

**Article 174: Trial report.**

1. The trial report must clearly specify the day, hour, month, year and location of the trial and every development of the trial from the beginning until the judgement is pronounced.

2. All questions and answers must be entered in the report.

3. After the trial concludes, the presiding judge must inspect the report and co-sign it with the trial clerk.

4. The defendant, defender, injured party, civil plaintiff, civil defendant and persons with lawful rights and interests relevant to the case or their lawful representatives may look at the trial report, have the right to request that corrections or addenda be made to the trial report, and certify the report with their signature.

**Section XVIII: Procedures for Beginning a Trial**

**Article 175: Procedures for beginning a trial.**

When beginning a trial, the presiding judge will read the decision for bringing the case to trial.

After listening to the clerk report the roster of persons subpoenaed to be present, the presiding judge will check their identification cards and explain them their rights and obligations during the trial.

If the defendant has not received a copy of the indictment as stipulated in Item 2, Article 34, and the decision to bring the case to trial during the period stipulated in Item 1, Article 157 of this code, and if the defendant requests it, the jury must postpone the trial.

**Article 176: Resolving suggestions to replace a judge, people's juror, procurator, expert, interpreter or court reporter.**

The procurator and persons participating in the legal proceedings must be asked whether they have any suggestions for replacing the judge, people's jurors, procurator, expert, interpreter or court reporter. If anyone makes such a request, the jury must examine it and make a decision.

**Article 177: Explaining the rights and duties of interpreters and experts.**

If an interpreter or expert participates in the trial, the presiding judge will introduce his name and occupation or position and will clearly explain him his rights and obligations. He must take an oath to fulfill his duties.

**Article 178: Explaining the obligations and isolation of witnesses.**

1. After asking the full name, age, occupation and place of residence of each witness, the presiding judge will clearly explain his legal obligations. A witness must take an oath not to make false statements. A witness who is a minor is not required to take an oath.

2. Before witnesses are questioned about the case, the presiding judge may decide on measures to keep witnesses from hearing the statements of each other or to have contact with others concerned with the case. If the statements made by the defendant and witness adversely affect each other, the presiding judge may decide to isolate the defendant from the witness before questioning the witness.

**Article 179: Resolving a requirement for examining the evidence and postponing a trial when someone is absent.**

The presiding judge must ask the procurator and persons participating in the legal proceedings whether anyone has suggestions for subpoenaing additional witnesses or introducing additional material evidence and documents. If a person participating in the legal proceedings is absent, the presiding judge must also ask if anyone has suggestions for postponing the trial or not. If someone does make a request, the jury will examine it and make a decision.

**Section XIX: Trial Questioning Procedures**

**Article 180: Reading the indictment.**

Before questioning is conducted, the procurator reads the indictment and presents supplementary views, if any.

**Article 181: Questioning procedure.**

1. The jury must fully confirm the details of each incident and crime in the case in accordance with a rational questioning procedure.
2. Each person will be questioned first by the presiding judge, then by the people's jurors and then by the procurator and defender. Persons participating in the trial also have the right to suggest to the presiding judge to further question details requiring clarification. Experts are questioned on issues pertaining to the expert evaluation.
3. During the questioning, the jury will examine the relevant material evidence in the case.

**Article 182: Publication of statements made at the investigating agency.**

1. If the persons being questioned are present at the trial, the jury and procurator may not recall or publish the statements they made at the investigating agency before they testify in the trial on the details of the case.
2. Statements made at the investigating agency may only be published under the following circumstances:
  - a. When the statement of the person being questioned in a trial contradicts the statement he made at the investigating agency.
  - b. When the person being questioned does not make a statement in a trial.
  - c. When the person to be questioned is absent or dead.

**Article 183: Questioning the defendant.**

1. The jury must individually question each defendant. If the statement of one defendant could adversely affect the statement of another, the presiding judge must isolate them. In this case, an isolated defendant may be informed of a statement made by a previous defendant and has the right to ask questions about that defendant.
2. A defendant may present his views on the indictment and details of the case. The jury may question further those points upon which the defendant has not fully testified or for which there are contradictions.
3. If the defendant does not answer the questions, the jury will continue the questioning of others and will examine the evidence.

**Article 184: Questioning the injured party, civil plaintiff, civil defendant and persons with lawful rights and interests relevant to the case or their lawful representatives.**

The injured party, civil plaintiff, civil defendant and persons with lawful rights and interests relevant to the case or their lawful representatives will testify on details

of the case relevant to them. Afterward, the jury may further question those points upon which they have not fully testified or for which there are contradictions.

**Article 185: Questioning witnesses.**

1. The jury must individually question each witness and prevent other witnesses from learning the contents of that questioning.
2. When questioning witnesses, the jury must clearly ask their relationships with the defendant and other interested parties in the case. The presiding judge will request them to testify on the details of the case that they know about, and will afterwards ask them about the points for which their testimony is incomplete or contradictions exist.
3. If the witness is a minor, the presiding judge may request his parent, guardian or teacher to assist in the questioning.
4. After completing his testimony, the witness will remain in the courtroom for possible further questioning.

**Article 186: Examining material evidence.**

1. Material evidence, photographs or reports confirming material evidence is introduced for examination at the trial.

When necessary, the jury may join the procurator and other trial participants in an on-site examination of material evidence that cannot be brought to the trial.

2. A procurator, defender and other trial participants have the right to present their observations on material evidence. The jury may question them further on issues related to material evidence.

**Article 187: On-site examination.**

If deemed necessary, the jury may accompany the procurator and other trial participants in an examination if the crime scene or other locations relevant to the case. A report on the on-site examination must be made in accordance with general procedures.

**Article 188: Presentation, publication of case documents and observations and reports of agencies and organizations.**

The observations and reports of agencies or organizations on details of the case are presented by a representative of those agencies or organizations; and in case there is no representative of the agency or organization participating, the jury will publish the observation or report during the trial.

All documents in the file or newly introduced during questioning must be published during the trial.

The procurator, defendant and other trial participants have the right to testify on those documents and to ask further questions on related issues.

**Article 189: Questioning experts.**

1. An expert will testify on his conclusions regarding the issue assigned for expert evaluation.
2. During the trial, the expert has the right to explain and supplement on the grounds of his conclusion.
3. If the expert is absent, the presiding judge will publish the expert conclusion.
4. A procurator, defender and other trial participants have the right to testify on the expert conclusion, and to query issues that are not clear or when contradictions exist in the expert conclusion.
5. When deemed necessary, the jury may decide on a supplementary evaluation or a reevaluation.

**Article 190: Concluding questioning.**

When deemed that the details of a case have been fully examined, the presiding judge will ask the procurator, defendant, defender and other trial participants whether they have requirements for examining another other issues. If someone makes such a request and that request is deemed necessary, the presiding judge will decide to continue the questioning.

**Section XX: Trial Argument**

**Article 191: Presentation of statements during argument.**

1. After questioning in a trial ends, the procurator will present his argument for conviction, suggesting that the defendant be found guilty of all or a portion of the indictment or of a lesser charge; and if deemed that grounds do not exist for establishing guilt, that the entire decision to prosecute be withdrawn and that the jury find the defendant not guilty.
2. The defendant will present his defense unless he has a defender who will conduct the defense. The defendant has the right to supplement the views of the defender.
3. The injured party, civil plaintiff, civil defendant and other persons with lawful rights and interests relevant to the case or their lawful representatives may present views to protect their rights and interests.

**Article 192: Rebuttal.**

Participants in the argument have the right to rebut the views of others but may make only one statement regarding each view with which they do not agree. The presiding judge may not restrict the duration of the argument but has the right to interrupt views not pertaining to the case.

**Article 193: Returning to questioning.**

If additional examination of the evidence is deemed necessary through the argument, the jury may decide to return to questioning. When the questioning ends, the argument must continue.

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**Article 194: Defendant's final statement.**

After participants in the argument no longer have anything additional to present, the presiding judge will declare the argument concluded.

The defendant may give a final statement. No questions may be asked when the defendant presents his final statement. The jury has the right to request that the defendant not present points unrelated to the case but cannot limit the defendant's time. If the defendant in his final statement presents additional new details of major significance to the case, the jury must decide to return to questioning.

**Article 195: Examining withdrawal of prosecution.**

1. When the procurator withdraws a portion of the decision to prosecute or makes a conclusion on a lesser charge, the jury will continue to adjudicate the case.
2. If the procurator withdraws the entire decision to prosecute, prior to deliberation, the jury will request that persons participating in the legal proceedings in the trial to present their views regarding that withdrawal.

**Section XXI: Deliberation and Pronouncing Judgement**

**Article 196: Deliberation.**

1. Only the judge and people's jurors have the right to deliberate. Members of the jury must resolve all issues of the case by a majority vote on one issue at a time. The judge will vote last. Persons with a minority opinion have the right to present their views in writing and to have them entered in the file.
2. In case the procurator withdraws the entire decision to prosecute, the jury will still resolve issues of the case in the order stipulated in Item 1 of this article. If there are grounds for confirming that the defendant is not guilty, the jury will pronounce him innocent; and if the withdrawal of prosecution is deemed groundless, a decision will be made to suspend the case and a motion will be made to a higher level organ of control.
3. Deliberation may be based only on evidence and documents reviewed during the trial.
4. A report must be made of the deliberation containing the views discussed and the decisions of the jury.



**Article 197: Returning to questioning and argument.**

If deemed through deliberation that details of the case have not been fully examined or questioned, the jury will decide to return to questioning and argument.

**Article 198: Judgement contents.**

1. The court will issue a judgement on behalf of the Socialist Republic of Vietnam.

2. The judgement must clearly specify: the day, hour, month, year and location of the trial, the full names of jury members and the court clerk; the full name of the procurator; the full name, day, month and year of birth, place of birth, place of residence, occupation, educational level, social component and police record of the defendant; the day the defendant was placed in temporary custody or detention; the full name, age, occupation, place of birth and place of residence of the defendant's lawful representative; the full name of the defender; and the full name, age, occupation and residence of the injured party, civil plaintiff, civil defendant, persons with lawful rights and interests relevant to the case, and their lawful representatives.

3. The judgement must state the offense committed by the defendant, analyze the evidence confirming guilt or innocence, confirm whether the defendant is guilty or not, and if the defendant is found guilty, of what crime, and in accordance with what provision of this code, aggravating and extenuating details, and how the defendant should be handled. If the defendant is not guilty, the verdict must clearly specify the grounds confirming his innocence and must resolve the restoration of his honor and lawful rights and interests. The final portion of the judgement will specify the decisions of the court and the right to appeal the judgement.

**Article 199: Decision to request correction of management weaknesses.**

1. In conjunction with issuing the judgement, the court will issue a decision requesting that concerned agencies or organizations apply necessary measures to overcome the causes and conditions generating the crime in those agencies and organizations. Within a period of 30 days from receipt of the court's decision, those agencies and organization must inform the court of the measures applied.

2. The court's decision may be read at the trial along with the judgement or sent separately to the concerned agency or organization.

**Article 200: Pronouncing judgement.**

While the judgement is being pronounced, everyone in the courtroom must stand. The presiding judge will read the judgement and afterwards may further explain enforcement of the judgement and the right of appeal.

If the defendant does not understand the Vietnamese language, after the judgement is pronounced, an interpreter must reread the entire judgement in the language of the defendant.

**Article 201: Releasing the defendant.**

Under the following circumstances, the jury must pronounce the immediate release at the trial of a defendant under temporary detention, if he is not being detained for other crimes:

1. The defendant is not guilty.
2. The defendant's criminal responsibility or sentence are waived.
3. The defendant is punished by a sentence not involving imprisonment.
4. The defendant is sentenced to prison but receives a suspended sentence.
5. The prison sentence is equal to or shorter than the period the defendant was held in temporary detention.

**Article 202: Arrest of the defendant after judgement is pronounced.**

If a defendant not under temporary detention is sentenced to prison, he will only be incarcerated to serve the sentence when the judgement takes legal effect.

The court may decide to immediately incarcerate the defendant if there are grounds for believing he may flee or continue to commit crimes.

**Article 203: Judgement delivery.**

Within 15 days at the latest after judgement is passed, the court must deliver copies of the judgement to the defendant, organ of control at the same level, and defender, send a duplicate of the judgement to persons tried in absentia, and notify the village, subward or city administration or the agency or organization in the location where the defendant resides or works.

If defendant is tried in absentia as stipulated in Points a or b, Item 2, Article 162 of this code, within the period of time stated above, a duplicate of the judgement must be posted in the offices of the village, subward or city administration in the location where the defendant last resided or worked.

The injured party, civil plaintiff, civil defendant and persons with lawful rights and interests pertaining to the case or their lawful representatives have the right to request the court for an extract or duplicate of the judgement.

**Part Four: Reexamining Judgements and Decisions that Have Not Taken Legal Effect in Accordance with the Appeal Process**

**Section XXII: Nature of Appellate Process and Right to Appeal, Protest**

**Article 204: Nature of appellate process.**

The appellate process is a direct reexamination by a higher level court of the judgements or decisions made in a preliminary trial that have not yet taken legal effect and have been appealed or protested.

**Article 205: Persons with the right of appeal.**

A defendant, injured party or lawful representative of an injured party have the right to appeal the verdict or decision of a preliminary trial.

A defender has the right of appeal in order to protect the interests of a minor or a physically or mentally incompetent person.

A civil plaintiff, civil defendant or their lawful representatives have the right to appeal the portion of the judgement or decision relevant to payment of damages.

Persons with lawful rights and interests relevant to the case and their lawful representatives have the right to appeal the portion of the judgement or decision relevant to their lawful rights and interests.

A person pronounced innocent by the court has the right to appeal the portion containing the reasons the preliminary trial judgement pronounced him innocent.

**Article 206: Protest of organ of control.**

The organ of control at the same or higher level has the right to protest the judgements or decisions of the preliminary trial.

**Article 207: Appeal and protest procedures.**

1. A person lodging an appeal must send a petition to the court that conducted the preliminary trial or to the appellate level court. If the defendant is under temporary detention, the jail supervisory board must ensure the defendant's right of appeal.

A person lodging an appeal must also make a direct presentation to the court that conducted the preliminary trial concerning the appeal. The court must make a report on that appeal.

2. An organ of control submits a protest in writing, with the reasons clearly stated. The protest is sent to the court that conducted the preliminary trial.

**Article 208: Time limit of appeal, protest.**

1. The time limit for an appeal or protest is 15 days from the day the judgement was pronounced. If court has prosecuted the case in absentia, the time limit is calculated from the day a copy of the judgement is delivered to the party concerned or the day it was posted.

2. If the appeal petition is sent through the postal service, the date of appeal is calculated based on the postmark of the envelope. In case an appeal is sent through a jail supervisory board, calculation of the appeal date is based on the day the petition is received by the jail supervisory board.

**Article 209: Overdue appeal.**

1. An overdue appeal may be executed, if a legitimate reason exists.

2. The appellate court will examine the reason an appeal is overdue and issue a decision to execute the overdue appeal or not.

**Article 210: Notification of appeals, protests.**

1. When an appeal or protest is lodged, the court at the preliminary trial level must notify the organ of control and participants in the legal proceeding.

2. A person notified of an appeal or protest has the right to send his views to the court at the appellate level.

**Article 211: Consequences of lodging appeals, protests.**

1. The portions of the judgement being appealed or protested are not enforced, except for the cases stipulated in Item 2, Article 226 of this code. When the entire judgement is appealed or protested, the entire judgement is not enforced.

2. The court at the preliminary trial level must forward the court file, appeals and protests to the court at the appellate level within a period of 7 days from the date the time limit for appeals and protests expires.

**Article 212: Supplementing, changing, withdrawing appeals, protests.**

1. Before or during an appellate hearing, the person lodging the appeal or the organ of control has the right to supplement or change the appeal or protest but not exacerbate the condition of the defendant; or to withdraw a portion or all of the appeal or protest.

2. If an entire appeal or protest is withdrawn during the appellate hearing, the hearing must be dismissed.

**Article 213: Appealing, protesting decisions of preliminary trial court.**

1. An organ of control will protest the decisions of a court at the preliminary trial level within a period of 7 days from the date the court issued the decision.
2. A decision to suspend or dismiss a case by a court at the preliminary trial level may be protested within 7 days from the receipt of the decision.

**Section XXIII: Appellate Adjudication**

**Article 214: Sphere of appellate adjudication.**

An appellate court will examine the contents of an appeal or protest. If deemed necessary, the appellate court may examine other portions of the verdict not being appealed or protested.

**Article 215: Time limit for appellate adjudication.**

Appellate adjudication by a people's court at the provincial level or military court at the military region level must be conducted within a period not to exceed 30 days. The appellate court of the People's Supreme Court and Central Military Court must conduct appellate adjudication within a period not to exceed 60 days from the date the case file is received.

**Article 216: Appellate jury composition.**

The appellate jury comprises three judges and when necessary two additional people's jurors.

**Article 217: Appellate hearing participants.**

1. In an appellate hearing, participation of a procurator at the same level is mandatory; and if absent, the hearing must be postponed.
2. The defender, person lodging the appeal and persons with lawful rights and interests relevant to the appeal or protest must participate in the hearing; if absent for a legitimate reason, the hearing must be postponed.
3. Participation by others in the hearing is decided by a court at the appellate level if their presence is deemed necessary.

**Article 218: Supplementing, examining evidence during appellate hearing.**

1. Before or during adjudication in the hearing, the organ of control may on its own or at the request of the court provide new supplementary evidence; and the person lodging the appeal and persons with lawful rights and interests relevant to the appeal or protest also have to right to provide new evidence.

2. Both the old and new evidence must be examined during the hearing. The judgement of the appellate level court must be based on all the old and new evidence.

**Article 219: Appellate hearing procedure.**

An appellate hearing is conducted like a preliminary trial but before the questioning, a member of the jury must present a summary of the preliminary trial judgement and decision and the contents of the appeal or protest.

**Article 220: Appellate judgement.**

An appellate level court is empowered to:

1. Reject an appeal or protest and retain intact the preliminary judgement.
2. Revise the preliminary judgement.
3. Reverse the preliminary judgement and transfer the case file for reinvestigation or reexamination.
4. Reverse the preliminary judgement and dismiss the case.

**Article 221: Revision of preliminary judgement.**

1. A court at the appellate level is empowered to decide on revision of a preliminary judgement as follows:
  - a. To waive the criminal responsibility or sentence of the defendant.
  - b. To apply provisions of the Penal Code for a lesser crime.
  - c. To reduce the sentence of the defendant.
  - d. To reduce the payment for damages and to revise decisions for handling material evidence.
2. If grounds exist, an appellate level court may reduce the sentence or apply provisions of the Penal Code for a lesser crime for both the defendants who did and did not appeal or for judgements that were not appealed or protested.
3. If the organ of control or injured party lodging the appeal requests, the appellate level court may increase the sentence, apply provisions of the Penal Code for a more serious crime, and increase the payment for damages; if a protest is lodged by an organ of control or an appeal is lodged by an injured party or civil plaintiff; and if grounds exist. The court still may reduce the sentence or apply measures of the Penal Code for a lesser crime and reduce the payment for damages.

**Article 222: Reversing a preliminary judgement for reinvestigation or retrial.**

1. An appellate level court may reverse a preliminary judgement to conduct a retrial from the period of investigation when deemed that the investigation at the preliminary level was incomplete and cannot be supplemented by the appellate level.

If the composition of the preliminary trial jury is not as legally stipulated or some other serious violation occurs in the legal proceedings, the appellate level court will reverse the preliminary judgement for retrial with a new jury composition.

2. When reversing a preliminary judgement for reinvestigation or retrial, the appellate level court should clearly specify the reason for the reversal.

3. When reversing a preliminary judgement for retrial, the appellate court may not predetermine evidence that must be accepted or rejected by the preliminary trial court, nor predetermine the provisions of the Penal Code and the sentences the preliminary trial court may apply.

**Article 223: Reversing a preliminary judgement and dismissing the case.**

When one of the grounds stipulated in Points 1 and 2, Article 89 of this code exists, the appellate level court will reverse the preliminary judgement, pronounce the defendant not guilty and dismiss the case; and if one of the grounds stipulated in Points 3, 4, 5, 6 and 7, Article 89 of this code exists, the preliminary judgement will be reversed and the case dismissed.

**Article 224: Reinvestigation or retrial of a criminal case.**

After an appellate level court reverses a judgement and a reinvestigation or retrial must be conducted, an investigative agency will conduct a reinvestigation and a court at the preliminary trial level will retry the case in accordance with general procedures.

**Article 225: Appellate process for decisions of courts at the preliminary trial level.**

1. When decisions of a court at the preliminary trial level are appealed or protested, a court at the appellate level must conduct a hearing, but if deemed necessary, may subpoena necessary persons to participate in the legal proceedings to hear their views before the court issues a decision

2. The appellate level court must issue a decision resolving the appeal or protest within a period of 10 days from receipt of the case file.

3. When deemed that decisions of a court at the preliminary trial level are being appealed or protested, the appellate level court has the powers stipulated in Article 220 of this code.

**Part Five: Enforcement of Court Judgements and Decisions**

**Section XXIV: General Stipulations on Enforcement of Court Judgements and Decisions**

**Article 226: Enforceable judgements and decisions.**

1. Enforceable judgements and decisions are those that have taken legal effect, comprising:

- a. Judgements and decisions of a simultaneous preliminary and final trial.
- b. Judgements and decisions of a preliminary trial court that are not appealed or protested in accordance with the appellate procedure.
- c. Judgements and decisions of an appellate court.
- d. Judgements and decisions of a court at the appellate judge or retrial level.

2. If the defendant is under temporary detention and the appellate court decides to dismiss the case, absolve the guilt, waive the criminal responsibility or the sentence of the defendant, or suspend the sentence whether or not it involves imprisonment, or when the prison sentence is equal to or less than the period of temporary detention, the judgement or decision of the court will be enforced immediately, despite the possibility of appeals or protests.

3. Within a period of 15 days from the time a judgement or decision of a court takes legal effect, the presiding judge conducting the preliminary trial must issue a decision enforcing the judgement or delegating a court at the same level to enforce the judgement.

A decision to enforce a judgement must specify the full name of the person issuing the decision; the name of the agency responsible for enforcing the judgement or decision; the full name, day, month and year of birth, and place of residence of the person convicted; and the judgement or decision that the convicted person must carry out.

When the person convicted is out on bail, the judgement enforcement decision must specify that the deadline for that person to be present at a public security agency for enforcement of the sentence is 7 days from the day the decision is received.

When a decision is made to enforce judgement, a copy of the judgement or decision must be sent to the organ of control at the same level as the site of enforcement, to the enforcement agency and to the person convicted.

**Article 227: Agencies, organizations obligated to enforce court judgements and decisions.**

1. A public security agency enforces judgements involving a limited prison term or life imprisonment, and participates in a capital punishment enforcement board as stipulated in Article 229 of this code.

2. The village, subward or city administration, and agency or organization where the person convicted resides or work is obligated to follow and supervise the rehabilitation of a person given a suspended sentence or sentenced to rehabilitation without imprisonment.

3. Enforcement of a judgement to restrict or prohibit residency, deprive a number of civil rights, prohibit the holding of some positions or prohibit the practice of certain professions is the responsibility of the village, subward or city administration, or the agency or organization where the judgement is enforced.

4. Specialized public health facilities enforce decisions for compulsory treatment.

5. Village, subward or city administrations, or agencies and organizations are obligated to assist a court executor in enforcing judgements involving fines, confiscation of assets and payment of damages. If necessary to apply compulsory methods to enforce a judgement, the public security agency and other related state agencies are obligated to coordinate.

6. Enforcement of a military court judgement and decision is undertaken by organizations in the army.

7. Agencies enforcing a judgement must inform the presiding judge of the court that issued the enforcement decision that the judgement or decision has been enforced; and if not enforced, clearly state the reasons.

#### **Section XXV: Enforcing a Death Sentence**

##### **Article 228: Procedure for examining a death sentence prior to enforcement.**

1. After a death sentence takes legal effect, the court file must be sent immediately to the Chief Justice of the People's Supreme Court and a copy of the judgement must be sent immediately to the Chief Procurator.

Within a period of 2 months from the date of receipt of the court judgement and file, the Chief Justice of the People's Supreme Court and the Chief Procurator must issue any decision protesting the appellate hearing or retrial.

Within a period of 7 days from the time the judgement takes legal effect, the convicted person may submit an appeal for clemency to the Council of State.

2. A death sentence will be enforced if there is no protest from the Chief Justice of the People's Supreme Court or the Chief Procurator in accordance with the procedures of an appellate hearing or retrial.

If the convicted person appeals for commutation of the death penalty, the death sentence will be enforced after the Council of State rejects the appeal

##### **Article 229: Enforcing a death sentence.**

1. The presiding judge of the preliminary trial court will issue a decision to enforce the sentence and will form a capital punishment enforcement board comprising representatives from the court, organ of control and public security office. The capital punishment enforcement board must check the finger prints of the convicted person before enforcing the sentence.

2. Before enforcing the sentence, the convicted person must be allowed to read the decision to enforce the sentence and the decisions of the Chief Justice of the People's Supreme Court and the Chief Procurator not to protest, and if the convicted person has made an appeal for commutation of the death sentence, he must be allowed to read a copy of the decision of the Council of State rejecting his appeal.

3. A death sentence is enforced by a firing squad.

4. A report must be made on enforcement of a death sentence specifying that the decisions were given to the convicted person to see, any statements he made and any correspondence or articles he left for relatives.

5. Under special circumstances, the capital punishment enforcement board will postpone the execution and submit a report to the Chief Justice of the People's Supreme Court.

#### **Section XXVI: Enforcing Prison Sentences and Other Forms of Punishment**

##### **Article 230: Enforcing a prison sentence.**

1. Under circumstances in which the convicted person is held in temporary detention, depending upon the requests of his relatives, the public security agency must permit the convicted person to meet with his relatives before enforcing the sentence.

A jail supervisory board must notify the family of the convicted person where he is serving his sentence.

2. In case the convicted person is out on bail and the deadline for his appearance has expired and he has not appeared at the public security office to serve his sentence, he will be escorted.

3. The presiding judge of the court that issued the judgement enforcement decision must keep track of the enforcement. The public security office must inform the court of a convicted person's arrest to enforce the judgement or the reason that an arrest has not been made, and the methods that should be applied to ensure the judgement is enforced.

##### **Article 231: Deferring enforcement of a prison sentence.**

For a convicted person out on bail, the presiding judge may on his own or at the suggestion of the organ of control, public security agency or convicted person, defer enforcement of the sentence under the following circumstances:

1. If the convicted person is seriously ill, enforcement of the sentence is deferred until he recovers his health.

2. If the convicted person is a pregnant woman or has a newborn baby, enforcement of the sentence will be deferred for 3 months to a year.

3. If the convicted person is the sole laborer in a family and his imprisonment will create special difficulties for the family, enforcement of the sentence may be deferred up to 1 year, except when he is dangerous to society or is convicted for a crime especially damaging to national security or for other serious crimes.

4. For military personnel convicted of a less serious crime, at the request of a commander at the regimental level or higher due to combat or combat readiness requirements, the prison sentence may be deferred for 6 months to a year.

**Article 232: Temporarily suspending a prison sentence.**

1. In accordance with suggestions of the organ of control or jail supervisory board, the presiding judge of the court issuing the sentence enforcement decision may temporarily suspend the sentence of a convicted person who is not dangerous under the circumstances stipulated in Points 1, 2 and 4, Article 231 of this code. A temporary suspension for adjudication in accordance with appellate procedures will be decided by a court at the next higher level.

2. The period of a temporarily suspended sentence is not counted in the period of a sentence served.

**Article 233: Managing persons with deferred or temporarily suspended prison sentences.**

1. A person receiving a deferred or temporarily suspended prison sentence will be assigned to the village, subward or city administration or the agency or organization where he resides or works for management. He may not arbitrarily travel to another location without the permission of the village, subward or city administration or the agency or organization managing him.

2. If during the period of a deferred or temporarily suspended prison sentence, a convicted person commits a serious violation of the law or decides to flee, the presiding judge who has granted the deferment or temporarily suspended sentence will cancel that decision and issue orders for his arrest to serve the sentence.

**Article 234: Enforcing suspended prison sentences, rehabilitation without imprisonment and rehabilitation in army disciplinary units.**

1. A convicted person receiving a suspended prison sentence or rehabilitation without imprisonment will be assigned to the village, subward or city administration, or to the agency or organization where he resides or works for supervision and education.

2. A person sentenced to rehabilitation in an army disciplinary unit will be assigned to such a unit.

**Article 235: Enforcing a sentence of residential restriction or prohibition.**

After the restriction sentence of a convicted person is implemented, he is assigned to the village, subward or city administration where he resides for enforcement of the sentence. A person sentenced to residential prohibition may not return to localities where he is forbidden to reside but must go someplace else.

**Article 236: Enforcing fines or confiscation of assets.**

The decision to enforce a fine or confiscation of assets must be sent to the executor and village, subward or city administration where the convicted person resides.

Confiscation of assets must be conducted as stipulated in Article 32 of the Penal Code.

**Section XXVII: Reducing the Length or Waiving Enforcement of a Sentence**

**Article 237: Conditions for reducing the length or waiving a sentence.**

1. A person serving a prison sentence, under rehabilitation without imprisonment, rehabilitation in an army disciplinary unit, residential prohibition or restriction may have the length of his sentence reduced as stipulated in Articles 49, 50, 51, 66 and 69 of the Penal Code. If he has not yet served his sentence, the entire sentence may be waived as stipulated in Item 2, Article 51 of the Penal Code.

2. A convicted person receiving a suspended sentence may have his period of probation reduced as stipulated in Article 44 of the Penal Code.

**Article 238: Procedures for reducing the length of or waiving a sentence.**

1. Courts empowered to decide on reducing the length of or waiving a prison sentence are people's courts at the provincial level and military courts at the military region level where the convicted person is serving his sentence.

Reducing or waiving other sentences or reducing a period of probation fall under the jurisdiction of people's courts at the district level and military courts at the area level where the convicted person is serving his sentence or is under probation.

2. The file suggesting reduction of a sentence or probationary period must contain the suggestions and observations of the agencies and organizations obligated to enforce judgements stipulated in Article 227 of this code.

3. When the court examines a suggestion to reduce or waive a sentence, a member of the court will present the issues requiring examination, a representative of the organ of control will express his views, and the court will issue a decision accepting or rejecting the suggestion to reduce or waive a sentence or shorten a period of probation.

#### **Section XXVIII: Case Expunction [xoas ans]**

**Article 239: Tacit case expunction [duwong nhieen xoas ans].**

In accordance with a request from a person with tacit case expunction as stipulated in Article 53 of the Penal Code, the presiding judge of the preliminary trial will issue a certificate that the person has been granted case expunction.

**Article 240: Case expunction decided by the court.**

1. Under the circumstances stipulated in Articles 54 and 55 of the Penal Code, case expunction will be decided by the court. The convicted person must make an appeal for case expunction to the court conducting the preliminary trial accompanied by observations of village, subward or city administration or the agency or organization where he resides or works.

2. The presiding judge will transfer the file to the organ of control for written opinions on the case expunction request. If deemed that sufficient conditions exist, the presiding judge may decide to grant case expunction; and if sufficient conditions do not exist, issue a decision rejecting the case expunction request.

#### **Part Six: Reevaluation of Judgements and Decisions That Have Taken Legal Effect**

#### **Section XXIX: Appellate Hearing**

**Article 241: Nature of an appellate hearing.**

An appellate hearing is a reexamination of a judgement or decision that has taken legal effect but is protested due to detection of a violation of the law in trying the case.

**Article 242: Grounds for protest according to appellate hearing procedure.**

A court judgement or decision that has taken legal effect is protested according to appellate hearing procedure when one of the following grounds exist:

1. Investigation and questioning during the trial was unilateral or incomplete.

2. Conclusions reached in the judgement or decision are inconsistent with the objective details of the case.

3. There was a serious violation in legal proceedings during investigation, prosecution or adjudication.

4. Serious errors occurred in application of the Penal Law.

**Article 243: Detecting that a judgement or decision that has taken legal effect should be reexamined in accordance with appellate hearing procedure.**

The convicted person, state agencies, social organizations and every citizen has the right to detect and report violations of the law in judgements and decisions that have taken legal effect to the persons stipulated in Article 244 of this code.

When violations of the law in judgements and decisions that have taken legal effect are detected, the organ of control and court must inform the persons authorized to lodge protests stipulated in Article 244 of this code.

**Article 244: Persons authorized to lodge protests in accordance with appellate hearing procedure.**

The following persons have the right to protest in accordance with appellate hearing procedure:

1. The Chief Justice of the People's Supreme Court and Chief Procurator have the right to protest the legally effective judgements and decisions of courts at all levels.

2. A Deputy Justice of the People's Supreme Court and Deputy Chief Procurator are empowered to protest the legally effective judgements and decisions of courts at lower levels.

3. The Chief Justice of the Central Military Court and the Chief Procurator of the Central Military Organ of Control have the right to protest the judgements and decisions that have taken legal effect of military courts at lower levels.

4. The presiding judge of a provincial level people's court, the procurator of a provincial level organ of control, presiding judge of a military region level military court and procurator of a military region military organ of control are empowered to protest the legally effective judgements and decisions of lower level courts.

**Article 245: Temporarily suspending enforcement of protested judgements and decisions.**

Persons who have protested a judgement or decision that has taken legal effect have the right to decide on temporarily suspending the enforcement of that judgement or decision.

**Article 246: Protests.**

1. Protests lodged in accordance with the appellate hearing procedure must specify the reason and be submitted to:

- a. The court that issued the protested judgement or decision.
- b. The court that will conduct the appellate hearing.
- c. The convicted person and persons with rights and interests relevant to the protest.

2. When grounds do not exist for lodging a protest in accordance with the appellate hearing procedure, the person empowered to protest must notify the person, agency or organization that detected the error of the reasons.

3. Before beginning an appellate hearing, the person lodging a protest has the right to supplement or withdraw the protest.

**Article 247: Protest time limit.**

1. A protest following a course not beneficial to the convicted person may only be lodged within a period of 1 year from the date the judgement or decision takes legal effect.

2. A protest following a course beneficial to the convicted person may be lodged at any time, including cases in which the convicted person has died and redress is necessary.

**Article 248: Appellate hearing jurisdiction.**

1. The judiciary committee of a provincial level people's court will conduct an appellate hearing of judgements and decisions that have taken legal effect of people's courts at the district level; and the judicial committee of a military region level military court will conduct an appellate hearing of judgements and decisions that have taken legal effect of military courts at the area level.

2. The People's Supreme Criminal Court will conduct appellate hearings of judgements and decisions that have taken legal effect of people's courts at the provincial level; and the Central Military Court will conduct appellate hearings of judgements and decisions that have taken legal effect of military courts at the military region level.

3. The Judiciary Committee of the People's Supreme Court will conduct appellate hearings of judgements and decisions that have taken legal effect of courts under the People's Supreme Court.

4. The Judiciary Council of the People's Supreme Court will conduct appellate hearings of decisions made by the Judiciary Committee of the People's Supreme Court that are protested.

**Article 249: Appellate hearing participants.**

An appellate hearing is participated in by the head of the organ of control at the same level or a procurator delegated by him.

When deemed necessary, the court must subpoena the convicted person and defender and may subpoena persons with rights and interests relevant to the protest to participate in the appellate hearing.

**Article 250: Composition of the appellate hearing panel.**

The appellate hearing panel of the People's Supreme Court or Central Military Court comprises three judges. If a judiciary committee or judiciary council conducts the appellate hearing, the members participating in adjudication must make up two-thirds of the total number of members of the judiciary committee or judiciary council. An appellate decision of a judiciary committee or judiciary council requires over one-half the total number of members in agreement to be valid.

**Article 251: Appellate hearing procedure.**

During the hearing, a member of the appellate hearing panel will present a summary of the case contents and contents of the protest, and a representative of the organ of control will state his views.

If the convicted person, defender and persons with lawful rights and interests relevant to the protest have been subpoenaed, these persons will present their views before the organ of control representative makes his statement. If they are absent, the appellate hearing panel may still conduct the hearing.

**Article 252: Period of appellate hearing adjudication.**

An appellate hearing will be conducted within a period of 4 months from the date the protest is received.

**Article 253: Scope of appellate hearing.**

The appellate hearing panel will examine the entire case and is not restricted to the contents of the protest.

**Article 254: Decision of appellate hearing.**

The appellate hearing panel is empowered to issue decisions to:

1. Disapprove a protest and retain intact a judgement or decision that has taken legal effect.
2. Reverse a judgement or decision that has taken legal effect and dismiss the case.
3. Reverse a judgement or decision that has taken legal effect for reinvestigation or retrial.
4. Revise a judgement or decision that has taken legal effect.



**Article 255: Reversing a judgement or decision that has taken legal effect and dismissing the case.**

The appellate hearing panel may reverse a judgement or decision that has taken legal effect and dismiss the case, if there are one of the grounds stipulated in Article 89 of this code.

**Article 256: Reversing a judgement or decision to conduct a reinvestigation or retrial.**

The appellate hearing panel may reverse a judgement or decision to conduct a reinvestigation or retrial under the circumstances stipulated in Article 242 of this code. If a retrial is necessary, depending on the circumstances, the appellate hearing panel may decide on a retrial at the preliminary trial or appellate level. If an appellate judgement or decision is wrong but the preliminary judgement or decision is right, the appellate hearing panel will reverse only the erroneous decision and retain intact the preliminary judgement or decision.

**Article 257: Revision of a judgement or decision that has taken legal effect.**

The appellate hearing panel may not increase a sentence or apply provisions of the Penal Code for a more serious crime, but has the right to revise the sentence and apply provisions of the Penal Code for a lesser crime regarding persons who are the object of a protest and even those who are not following that course.

**Article 258: Effect of appellate decision.**

A decision of the appellate hearing panel takes legal effect from the date the decision is issued.

**Article 259: Reinvestigating, retrying a case in a court at the preliminary or appellate level after reversal by the appellate hearing panel.**

If the appellate hearing panel decides that reinvestigation is necessary, within a period of 5 days, the case file must be returned to the organ of control at the same level for reinvestigation in accordance with general procedures.

If the appellate hearing panel decides on a retrial at the preliminary or appellate level, the adjudication must be conducted in accordance with general procedures.

### **Section XXX: Retrial**

**Article 260: Nature of a retrial.**

Retrial procedures are applied for judgements or decisions that have taken legal effect but are protested because of newly detected details that could basically change the contents of the judgement or decision and of which the court was unaware when that judgement or decision was made.

**Article 261: Grounds for protest following retrial procedures.**

The details used as grounds for a retrial protest are:

1. A witness statement, expert statement or interpreter translation has major points detected that are not entirely truthful.
2. An investigator, procurator, judge or people's juror reaches an incorrect conclusion causing the case to be erroneously adjudicated.
3. Material evidence or other documents in the case have been falsified or are not entirely truthful.

**Article 262: Notification and confirmation of newly detected details.**

1. A convicted person, state agency, social organization and every citizen has the right to notify an organ of control or court of newly detected details in a case. The head of the organ of control authorized to lodge retrial protests will issue a decision confirming those details.
2. If there is one of the grounds stipulated in Article 262 of this code, the head of the organ of control will issue a retrial protest decision and transfer the case file to the court with jurisdiction. If no grounds exist, the head of the organ of control will reply to the agencies, organization or persons detecting the detail.

**Article 263: Persons with retrial protest authority.**

The Chief Procurator has the right to lodge a retrial protest for judgements or decisions that have taken legal effect of people's courts and military courts at all levels. The Chief Military Procurator has the right to lodge a retrial protest for judgements or decisions that have taken legal effect of military courts at all levels.

The head of an organ of control at the provincial level has the right to lodge a retrial protest for judgements or decisions that have taken legal effect of people's courts at the district level. The head of a military region organ of control is empowered to lodge a retrial protest for judgements or decisions that have taken legal effect of area level military courts.

3. A copy of the protest must be sent to the convicted person and persons with rights and interests relevant to the protest.

**Article 264: Temporarily suspending enforcement of a judgement or decision for which a retrial protest has been lodged.**

Persons who have lodged a protest in accordance with retrial procedure have the right to temporarily suspend enforcement of the judgement or decision being protested.

**Article 265: Time limit of retrial protest.**

1. A retrial following a course not beneficial to the convicted person must be conducted within the statute of limitations period stipulated in Article 45 of the Penal Code and cannot exceed 1 year from the date the people's organ of control received the newly detected details.

2. A retrial following a course beneficial to the convicted person has no time limitation and may be conducted even in cases where the convicted person has died but redress is necessary.

**Article 266: Retrial jurisdiction.**

1. Judiciary committees of people's courts at the provincial level will retry judgements or decisions that have taken legal effect of people's courts at the district level; and the judiciary committees of military region level military courts will retry judgements or decisions that have taken legal effect of area military courts.

2. The People's Supreme Criminal Court will retry judgements or decisions that have taken legal effect of provincial level people's courts; and the Central Military Court will retry judgement or decisions that have taken legal effect of military region level military courts.

3. The Judiciary Committee of the People's Supreme Court will retry judgements or decisions that have taken legal effect of courts under the People's Supreme Court.

4. The Judiciary Council of the People's Supreme Court will retry judgements or decisions that have taken legal effect of the Judiciary Committee of the People's Supreme Court.

**Article 267: Conducting a retrial.**

The stipulations in Articles 249, 250, 251 and 252 of this code also apply to retrial of a case.

**Article 268: Decisions of the retrial jury.**

A retrial jury is empowered to decide:

1. To reject a protest and maintain intact a judgement or decision that has taken legal effect.
2. To reverse a judgement or decision that has taken legal effect for reinvestigation or retrial.
3. To reverse a judgement or decision that has taken legal effect and dismiss the case.

**Article 269: Effect of a retrial decision.**

The decision of a retrial jury takes legal effect from the day the decision is made.

**Article 270: Reinvestigating or retrying a case.**

After a judgement or decision has been reversed, a reinvestigation or retrial at the preliminary level is conducted in accordance with general procedures.

**Part Seven: Special Procedures**

**Section XXXI: Procedures for Cases in Which the Accused or Defendant is a Minor**

**Article 271: Scope of application.**

Procedures for conducting legal proceedings in cases in which the accused or defendant is a minor are applied in accordance with the stipulations of this section, and will simultaneously follow other stipulations of this code not conflicting with this section.

**Article 272: Investigation, prosecution and adjudication.**

1. An investigator, procurator and judge conducting adjudication in cases where minors commit crimes must be a person with the necessary understanding in psychology and educational science as well as activity in efforts to prevent and control crimes committed by minors.

2. When conducting investigation, prosecution and judgement, the following must be clearly specified:

- a. The age, physical and mental development level, and level of understanding about his criminal action of the minor.
- b. Living and educational conditions.
- c. Whether or not there was adult inducement.
- d. The motive and conditions of the crime.

**Article 273: Temporary custody, temporary detention.**

If the grounds stipulated in Articles 62, 63, 64, 68 and 71 of this code exist, a minor may be arrested and taken into temporary custody or detention, but only for serious crimes and in accordance with the stipulations in Article 58 of the Penal Code.

**Article 274: Supervising an accused or defendant minor.**

1. An investigating agency, organ of control or court may issue a decision remanding an accused or defendant minor to his parents or guardian to ensure the presence of the accused or defendant when summoned by the agency conducting the legal proceedings.

2. Persons assigned to supervision are obligated to closely supervise the minor, and to follow the deportment, morals and education of that individual.

**Article 275: The defender.**

An investigating agency, organ of control or court must request the bar association to appoint a defender for the accused or defendant, if he cannot select one himself. A lawful representative of the accused or defendant may select a defender or conduct the defense himself.

**Article 276: Participation in the legal proceedings by families, schools and social organizations.**

1. Family representatives of the accused or defendant, teachers and representatives of schools, the Ho Chi Minh Communist Youth Union and other social organizations in the location where the accused or defendant studies, works and lives have the right and obligation to participate in the legal proceedings in accordance with decisions of the investigating agency, organ of control and court.

2. Under necessary circumstances, interrogation of the accused at the investigating agency requires the presence of a family representative. The family representative may question the accused if the investigator agrees, present evidence, and make requests and complaints; and read the case file when the investigation is concluded.

3. During the trial, a family representative of the accused, and a school or social organization representative must be present.

**Article 277: Adjudication.**

1. The jury must contain one people's juror who is a teacher or a cadre from the Ho Chi Minh Communist Youth Union.

Under necessary circumstances, the court may decide to try the case in private.

2. When judgement is made, if deemed unnecessary to sentence the defendant, the court will apply one of the legal measures stipulated in Article 60 of the Penal Code.

**Article 278: Enforcing a prison sentence.**

1. A convicted minor will serve a prison sentence in accordance with a system of separate detention as stipulated by the law.

Minors may not be placed in detention with adults.

2. A convicted minor must be able to engage in occupational or cultural study during the period he is serving his sentence.

3. If a minor is serving a sentence when he become 18 years old, he must be transferred to the system of adult detention.

4. When a minor has finished serving his sentence, the jail supervisory board must coordinate with the administration and social organization in the village, subward or city to assist that person in returning to normal life in society.

**Article 279: Ending enforcement of judicial measures and reducing sentences.**

A convicted minor may have enforcement of judicial measures ended or his sentence reduced when sufficient conditions exist as stipulated in Articles 61, 62 or 66 of the Penal Code.

**Article 280: Case expunction[xoas ans].**

Case expunction for a minor may be conducted in accordance with general procedures when sufficient conditions exist as stipulated in Article 67 of the Penal Code.

**Section XXXII: Procedures for Applying Measures of Compulsory Treatment**

**Article 281: Conditions and jurisdiction for the application of compulsory treatment measures.**

1. When there is suspicion that a person will commit actions dangerous to society and does not have the ability to take criminal responsibility as stipulated in Article 12 of the Penal Code, depending on the phase of criminal proceedings, the investigating agency, organ of control or court must solicit a forensic evaluation.

Based on the conclusion of a forensic evaluation board, the organ of control or court will issue a decision for the application of compulsory treatment.

2. The application of compulsory treatment measures is decided by an organ of control during the investigative phase or the court during the adjudicative or sentence enforcement phase.

**Article 282: Investigation.**

1. For cases with the grounds stipulated in Item 1, Article 281 of this code, the investigating agency must clarify:

- a. The actions dangerous to society that have occurred.
- b. The mental condition and mental affliction of the person committing actions dangerous to society.
- c. Whether the person committing actions dangerous to society has lost his ability to comprehend or control his actions or not.

2. During the legal proceedings, the investigating agency must ensure that a defender participates from the time that it is confirmed that the person committing dangerous actions is mentally afflicted. A lawful representative of that person may participate in the legal proceedings under necessary circumstances.

**Article 283: Investigative conclusion.**

When an investigation is concluded, the organ of control may issue one of the following decisions:

1. To temporarily suspend or dismiss the case.
2. To dismiss the case and decide on the application of compulsory treatment.
3. To conduct legal proceedings against the defendant in court.

**Article 284: Adjudication.**

1. The court may issue one of the following decisions:
  - a. To waive the criminal responsibility or sentence and apply measures of compulsory treatment.
  - b. To dismiss the case and apply measures of compulsory treatment.
  - c. To temporarily suspend the case and apply measures of compulsory treatment.
  - d. To return the court file for reinvestigation or a supplementary investigation.
2. Besides deciding to apply measures of compulsory treatment, the court may settle the issue of payment of damages or other issues relevant to the case.

**Article 285: Complaints, protests and appeals.**

1. When a complaint is made about the decision of an organ of control to apply measures of compulsory treatment, the case must receive a preliminary trial in a court at the same level.
2. A court decision to apply measures of compulsory treatment that is protested or appealed is handled like a preliminary judgement.
3. A decision to apply measures of compulsory treatment remains legally effective despite complaints, protests or appeals.

**Article 286: Implementing and suspending measures of compulsory treatment.**

1. Measures of compulsory treatment are implemented in a specialized medical facility designated by an organ of control or court.
2. Upon receipt of a report from the treatment facility, a request from the person undergoing compulsory treatment or a request from an organ of control, on the basis of conclusions reached by a medical board, the organ of control or court that issued the decision to apply measures of compulsory treatment may issue a decision suspending implementation of the compulsory measures, and at the same time may decide to restore the temporarily suspended legal proceedings.

This code was passed by the Third Session of the Eighth National Assembly of the Socialist Republic of Vietnam on 28 June 1988.

Chairman of the National Assembly

Le Quang Dao

**ECONOMIC**

**Regulations on Implementing Foreign Investment Law**

42090047 Hanoi COUNCIL OF MINISTERS  
DECREE No 139 in Vietnamese 5 Sep 88

[Decree of Council of Ministers, issued 5 Sep 88:  
"Detailed Regulations on Implementing Foreign Investment Law in Vietnam"]

[Text] Council of Ministers

Based on the law establishing the Council of Ministers of the Socialist Republic of Vietnam promulgated on 4 July 1981;

Based on the law for foreign investment in Vietnam promulgated on 29 December 1987;

And in accordance with a suggestion of the Minister of External Economic Relations,

Decree:

**I**

**GENERAL PROVISIONS**

Article 1. - This decree solidifies the law for foreign investment in Vietnam (hereafter abbreviated as the Investment Law) with the purpose of creating favorable conditions for properly implementing the Investment Law.

Article 2. - The terms used in this decree must be understood in accordance with the definitions recorded in Article 2 of the Investment Law. Undefined terms in the Investment Law will be defined in the associated provisions of this decree.

Article 3. - This decree provides detailed regulations on the investment activities of foreigners in Vietnam following the forms recorded in Section II of the Investment Law. This decree does not stipulate indirect investment activities such as borrowing capital, etc.

Article 4. - The subjects regulated by the Investment Law are solidified as follows:

1. Vietnamese economic organizations with a corporation status consisting of enterprises, joint enterprises, enterprise federations and other state-operated economic units, joint state-private corporations, and production cooperatives.

2. Vietnamese individuals, including individual corporations, in partnership with the Vietnamese economic organizations noted above to form the Vietnamese party for business cooperation with a foreign party.

3. Vietnamese residing in a foreign country, no matter what their nationality, who invest directly in Vietnam will have the same benefits and obligations as a foreign investor. Under circumstances in which they form a partnership with one or many of the Vietnamese economic organizations noted in Point 1 of this article to form the Vietnamese party for business cooperation with a foreign party, they will have the same benefits and obligations as a Vietnamese individual. Both of these cases will enjoy separately stipulated favorable conditions.

4. Enterprises with foreign investment capital that are Vietnamese corporations.

5. Foreign economic organizations with a corporation status (consisting of national and international economic and financial organizations) and foreign individuals investing directly in Vietnam.

Article 5. - Economic organizations with a corporation status as mentioned in Article 4 are economic organizations with the following conditions:

1. Be a legally established organization;
2. Have private assets and be independently responsible for those assets;
3. Be authorized to independently decide its own production and business activities;
4. Be qualified to independently participate in civil relations (sign contracts and meet pledged obligations), and be qualified to serve as a plaintiff and defendant before the courts.

Article 6. - The state agency managing the foreign investment of the Government of the Socialist Republic of Vietnam in Section 5 of the Investment Law is the State Cooperation and Investment Commission. The Ministry of External Economic Relations is the agency accepting the investment proposals of foreign countries, and is responsible for examining these proposals, suggesting policy, and submitting reports for the review and decision of the State Cooperation and Investment Commission.

Article 7. -

1. Foreign organizations and individuals investing in Vietnam under the forms stipulated in Article 4, Section II of the Investment Law must follow the procedures stipulated in this decree.

2. Foreigners wishing to invest to Vietnam but with no cooperation prospects may contact a central or local investment service corporation or the Ministry of External Economic Relations.

3. Before engaging in preparatory discussions or signing a cooperative draft proposal with a foreign nation, the Vietnamese party must formulate a draft funding proposal and receive permission from a subjective agency (at the level of the central government, province, municipality or special zone directly subordinate to the central government level).

4. Fees for the examination of business association application, investment application and business license requests, the issuance of business permits, investment permits, enterprise by-law registration certificates, and announcements for concerned agencies and public press publication must be paid in full when submitting the request. In business and trade association contracts, the party paying the fees must be agreed upon by both parties.

Article 8. - Documents submitted to the State Cooperation and Investment Commission must be in Vietnamese or in Vietnamese and a commonly used foreign language. Both the Vietnamese language and foreign language documents must be of equal validity.

## II

### BUSINESS COOPERATION ON A CONTRACT BASIS

Article 9. -

1. A business cooperation contract is a document signed between a Vietnamese party and a foreign party to join in conducting one or many production or business activities in Vietnam on a basis of stipulating the responsibility of and distribution of business returns to each party and through establishment of a joint enterprise or any other corporation.

Trade and economic contracts of a simple commodity exchange nature such as the delivery of raw materials and acquisition of products, etc. do not fall within the regulatory purview of this decree.

2. The duration of a business cooperation contract is agreed upon by both parties consistent with the nature of the business operation and the necessity for completing the contract's objective.

Article 10. - A business cooperation contract must be signed by an authorized representative of each contract party.

Article 11. - When submitting requests to the State Cooperation and Investment Commission for contract approval and business license issuance, applicants must also submit the following documents:

- a) An agreed upon business cooperation contract;

b) An explanation of the contract's economic-technical basis;

c) Related information on the cooperators such as: the by-laws of the corporation or legal status of the contract participants, and the financial situation of both parties;

d) Data requested by the State Cooperation and Investment Commission aimed at clarifying a number of issues associated with the points above;

e) Proposals on preferential conditions, if any.

Article 12. - The State Cooperation and Investment Commission will announce its decision on the two cooperative parties within a period of 3 months from the day the request for a business license is received. Under circumstances in which the contract is approved, the State Cooperation and Investment Commission will issue a business license to both cooperative parties, after sending the license to concerned agencies of the central government and provincial, municipal and special zone people's committees, and publication in an official report of the Government of the Socialist Republic of Vietnam.

Article 13. - When examining a business license request, the State Cooperation and Investment Commission will inspect the validity of the business cooperation contract.

This contract must have the following primary provisions:

a) Conditions associated with the contract participants such as: the nationalities and addresses of the cooperators, and their authorized representatives;

b) The substance of business operations;

c) The nomenclature, quantity and quality of primary equipment and material required for business operations, the source of that equipment and material, the specifications, quantity and quality of products and the consumption market.

If a service contract, clearly note the rate of free exchange between the foreign and Vietnamese currencies;

d) The obligations and benefits of both parties, and the conditions for transferring obligations and benefits recorded in the contract;

e) Provisions on the duration of, and on revising and terminating the contract;

f) Procedures for resolving disputes between the parties that originate during contract implementation.

Article 14. - The business cooperation contract is only effective upon approval of the State Cooperation and Investment Commission and issuance of a business license.

Article 15. - A contract participant can only transfer one of his benefits or obligations to the other party upon the prior agreement of the other party.

The party receiving a transferred benefit or obligation recorded in the contract must forward to the State Cooperation and Investment Commission the documents recorded in Article 11, Point c of this decree.

No transferred benefits or obligations recorded in a contract are valid if not approved by the State Cooperation and Investment Commission.

Article 16. - In cases in which the contract participants agree on extending the contract period, a request must be submitted to the State Cooperation and Investment Commission at least 1 month before the contract expires. The State Cooperation and Investment Commission will announce its decision in writing within a period of 15 days from the date the request for contract extension is received.

Article 17. -

1. A business cooperation contract may be concluded ahead of the contract termination date if there are sufficient conditions for doing so as recorded in the contract.

2. If insufficient conditions exist as recorded in a contract, the contract will continue in effect even though expired, except when both contract participants agree to termination.

3. After a contract has expired, provisions on resolving disputes and complaints as stipulated in the contract will continue to be valid during a period prescribed by the law or a period agreed upon by both contract participants (under circumstances of no legal stipulations).

Article 18. - Participants in a business cooperation contract must annually report to the State Cooperation and Investment Commission the contract results achieved during the year by 31 March of the following year at the latest.

Article 19. - Each business cooperation contract participant must:

a) Pay all the required taxes;

b) Bear responsibility for his actions before the law of the Socialist Republic of Vietnam.

### III

#### JOINT ENTERPRISE

Article 20. - In this section, the terms below may be understood as follows:

1. "Total capital invested in a joint enterprise" is all the funds used to implement the joint enterprise proposal consisting of fixed and liquid assets, including the credit funds needed to operate the joint enterprise.

2. "Legal capital" is the investment capital of the joint enterprise recorded in the by-laws of the joint enterprise, as pledged and contributed by the joint enterprise parties in order for the joint enterprise to operate. Funds borrowed by the joint enterprise are not counted in legal capital.

3. "Registered capital" is the legal capital registered with the State Cooperation and Investment Commission.

Article 21. -

1. A joint enterprise may be established in Vietnam on the basis of a joint contract signed between a Vietnamese party and a foreign party (referred to below as the joint enterprise parties) with the purpose of conducting production and other business activities within the fields of the Vietnamese national economy.

Under special circumstances, a joint enterprise may be established on the basis of agreements signed between the government of the Socialist Republic of Vietnam and the government of a foreign country.

2. A joint enterprise operates on the principle of independent economic accounting, consistent with the joint enterprise contract, the by-laws of the joint enterprise, and the law of the Socialist Republic of Vietnam.

Article 22. - A joint enterprise may be established after the State Cooperation and Investment Commission issues an investment permit and a certification of the enterprise by-law registration.

Article 23. - An investment request is signed and submitted by one or both joint enterprise parties to the State Cooperation and Investment Commission. Accompanying the investment request, the joint enterprise parties must submit the following documents:

- a) The joint enterprise contract;
- b) Economic and technical argumentation;
- c) The joint enterprise by-laws;
- d) Data requested by the State Cooperation and Investment Commission for the purpose of clarifying a number of issues associated with the documents mentioned above;
- e) Proposals on preferential conditions, if any.

Article 24. - A joint enterprise contract consists of the following primary elements:

a) Conditions relating to the joint enterprise parties such as: the nationalities and addresses of the joint enterprise parties and their authorized representatives;

b) The name of the joint enterprise, the projected address, and the business operations of the enterprise;

c) The total investment capital, legal capital, contribution ratio of each party, capital contribution plan, and the conditions and procedures for transferring investment capital;

d) The nomenclature, quantity and quality of primary equipment and material needed for business operations and the source of supply; The specifications, quantity and quality of products and the consumption market. If a service contract, clearly record the rate of free exchange between the foreign and Vietnamese currencies;

e) The operations period of the joint enterprise and circumstances for terminating and dissolving the joint enterprise;

f) The principles of finance, accounting and account inspection (consisting of fixed asset depreciation, the enterprise fund deduction rate, and the insuring of joint enterprise assets);

g) The size and composition of the board of directors, and the number of directors appointed by each party; and the mission and authority of the board of directors, the chairman of the board of directors, the general director and deputy general directors;

h) The distribution ratio of profits and losses for the joint enterprise parties;

i) Labor relations in the joint enterprise;

j) The plan for training technical and operational management cadres and workers;

k) Procedures for resolving disputes between the joint enterprise parties originating from implementation of the joint enterprise contract, and regulations applied in case of disputes.

l) The language of the joint enterprise contract;

m) Conditions to make the joint enterprise contract effective.

Article 25. - By-laws of the joint enterprise consist of the following primary elements:

a) The names and addresses of the joint enterprise parties and their representatives;

b) The name and headquarters of the joint enterprise;

c) The production and business activities of the joint enterprise; and the production, business and production distribution objective and course;

d) The duration of operations of the joint enterprise;

e) The total investment capital, legal capital, and formula for contributing legal capital to the joint enterprise;

f) The contribution ratio of joint enterprise parties to the legal capital;

h) [Subhead "g" Omitted as published] The organization and composition of the board of directors and the work direction organization of the joint enterprise;

i) The representative of the joint enterprise before the courts and state agencies;

j) The principles of finance, accounting and account inspection;

k) The profit and loss distribution ratio of the joint enterprise parties;

l) Circumstances and procedures for dissolving the joint enterprise;

m) Procedures for revising the joint enterprise by-laws.

Article 26. -

1. Within a period of 3 months from the date of receipt of the request for an investment permit, the State Cooperation and Investment Commission will announce its decision to the joint enterprise parties.

2. In case the State Cooperation and Investment Commission needs the parties of the joint enterprise to supply supplementary data, or requests that a number of the contract provisions or by-laws be revised, these requirements must be forwarded to the joint enterprise parties within a period of 1 month from the date of receipt of the request for an investment permit.

If the joint enterprise parties have not replied in writing within a period of 45 days after receiving the requests mentioned above from the State Cooperation and Investment Commission, the investment request will be considered invalid. Under circumstances in which a reply does not fully answer a request, the period necessary for doing so will not count on the period of review as recorded in Point 1 of this article.

3. In case the request for an investment permit is approved, the State Cooperation and Investment Commission will issue an investment permit and an enterprise statute registration certificate to the joint enterprise parties. These documents will be sent to concerned agencies of the central government, and provincial,

municipal and special zone people's committees, and will be published in an official report of the government of the Socialist Republic of Vietnam.

Article 27. - From the date the investment permit and joint enterprise statute registration certificate are received, the joint enterprise contract becomes effective and the joint enterprise has a corporation status.

Article 28. - Under circumstances in which the joint enterprise parties agree on revising provisions of the joint enterprise contract or the joint enterprise by-laws, these revisions become valid only when approved by the State Cooperation and Investment Commission.

Article 29. - Participants in the joint enterprise contribute legal capital as stipulated in the articles and regulations of the investment law.

Definition of the value of the contribution of each party is agreed upon on the basis of the international market prices at the time the contribution is made.

The State Cooperation and Investment Commission is authorized to examine and request that joint enterprise parties redefine the value of fund contributions made to be consistent with the stipulations of this article.

Article 30. - Legal capital may be contributed in full and at one time when establishing the joint enterprise or portion by portion during a period agreed upon by both parties.

The formula for contributing legal capital must be recorded in the joint enterprise by-laws.

Article 31. - During the process of operations, the joint enterprise cannot reduce the amount of legal capital. An increase in legal capital must be agreed upon by both the joint enterprise parties and registered with the State Cooperation and Investment Commission.

Article 32. - Each party has the authority to transfer its capital in the joint enterprise to the other party of the joint enterprise. In case the two joint enterprise parties cannot agree with each other on transfer conditions, the transferring party has the authority for transfer to a third party; conditions for a transfer to a third party cannot be more favorable than those set forth for the other party of the joint enterprise. The transfer above is only valid with the written agreement of the joint enterprise board of directors and after being approved by the State Cooperation and Investment Commission.

Article 33. - The joint enterprise is established in the form of a corporation with limited responsibilities, and every joint enterprise participant is responsible to his party, to the joint enterprise and to third parties within the purview of legal capital.



Article 34. - The highest leadership agency of the joint enterprise is the joint enterprise board of directors. The board of directors has the authority to make decisions on important issues of the joint enterprise.

Article 35. -

1. The number of members on the board of directors, ratio of member distribution for joint enterprise parties, appointment of members, and appointment of the board of director chairman, general director and deputy general directors are conducted in accordance with provisions of the investment law. The chairman of the board of directors may also concurrently serve as the general director of the joint enterprise.

2. The terms of office of board of director members are agreed upon by the joint enterprise parties but cannot exceed 5 years.

Article 36. - The periodicity of meetings by the board of directors is agreed upon by the joint enterprise parties in the by-laws of the joint enterprise but must be at least once a year. Meetings of the board of directors are convened by the board of directors chairman.

Article 37. - Conditions for holding a meeting are participation by more than two-thirds of the members of the board of directors. Members of the board of directors may give written authorization to a representative to attend a meeting and vote for them.

Article 38. - The following important issues must be decided and agreed upon in principle by all members of the board of directors:

1. The production and business plan of the joint enterprise, the budget and loans;

2. Major revisions and supplements to the joint enterprise by-laws on the organization and activities of the joint enterprise such as: changing the operations objective and course, increasing the legal capital, transferring capital, extending the operations termination date, temporarily halting operations, and combining or dissolving the joint enterprise.

3. The appointment, replacement or removal of a chairman of the board of directors, general director, deputy general director and key cadres of the joint enterprise.

Decisions of the board of directors on other issues are valid only when two-thirds of the members of the board are present and agree.

Article 39. - The general director and deputy general directors of the joint enterprise manage and handle the daily work of the joint enterprise. Under circumstances in which the joint enterprise has many deputy general

directors, the board of directors will appoint one first deputy general director. If the general director is a foreigner, the first deputy general director must be a Vietnamese citizen.

The board of directors allocates responsibilities and authority between the general director and first deputy general director. The general director and first deputy general director are responsible to the board of directors for the activities of the joint enterprise.

Article 40. - The technique transfer mentioned in this section is something brought into a joint technical enterprise by one party under the form of a capital contribution or a technique sold by a third party to the joint enterprise.

Article 41. -

1. The technique transferred to the joint enterprise must be one that is necessary and appropriate for the enterprise to produce significant socioeconomic results or to increase the competitive capabilities of the enterprise's product on the international market.

2. The transferred technique must be applied under one of the following requirements:

a) Appreciably improving the design and quality of the product and increasing output;

b) Creating a new product for which Vietnam has an urgent need or producing goods to replace those that are imported;

c) Significantly conserving raw materials and energy.

Article 42. - The government of the Socialist Republic of Vietnam protects the technique ownership rights of the party transferring the technique, and the benefits and obligations of the parties recorded in the technique transfer contract must be consistent with the regulations on technique transfer promulgated in Vietnam and with international precedent.

A contract for transfer of a technique to a joint enterprise under the form of a capital contribution must be calculated in accordance with the records for requesting an investment permit.

Article 43. - The operational duration of a joint enterprise is agreed upon by the parties of the joint enterprise in the joint enterprise contract. In principle, this period will not exceed 20 years. However, for draft proposals to exploit natural resources, for those demanding a great amount of investment capital, or when the period of project construction or investment capital collection is long, the joint enterprise parties are authorized to agree on a longer duration but not exceeding 40 years.

Article 44. - The operational duration of the joint enterprise is figured from the date the enterprise is issued a joint enterprise by-laws registration certificate.

Article 45. - In cases in which the parties of the joint enterprise agree to extend the operational duration of the joint enterprise as recorded in the investment permit, at least 3 months prior to the operational termination date of the joint enterprise, the enterprise parties must submit a request for examination and approval by the State Cooperation and Investment Commission.

Within a period of 30 days, counting from the date the request is received, the State Cooperation and Investment Commission will announce its decision to the parties of the joint enterprise. If approval is granted, the joint enterprise parties may continue operations without registering again.

Article 46. - The joint enterprise may terminate operations and dissolve before the termination date recorded in the contract under the following circumstances:

1. Cases of absolute necessity recorded in the joint enterprise contract that prevent the parties from successfully achieving the contract.
2. One or both parties of the joint enterprise failing to meet obligations recorded in the joint enterprise contract and consequently, denying conditions to the joint enterprise for continued operations.
3. The joint enterprise suffering losses to such a degree that the capabilities no longer exist for continued operations.
4. Joint enterprise operations causing serious environmental pollution for which no timely solutions are available.
5. One joint enterprise party transferring all of his capital to the other party.
6. Other cases of dissolution recorded in the joint enterprise contract.

If the joint enterprise must dissolve through the fault of one party, that party must compensate the other party for all losses.

Article 47. - Dissolution of a joint enterprise before the termination date is decided by the board of directors and agreed upon by the State Cooperation and Investment Commission.

The State Cooperation and Investment Commission is authorized to dissolve a joint enterprise before the termination date if the operations of the enterprise are inconsistent with the objective and mission recorded in the enterprise by-laws and investment permit.

Article 48. - At least 6 months before the termination date of a joint enterprise or when making a decision to dissolve a joint enterprise before the termination date, the board of directors is responsible for establishing an enterprise liquidation committee consisting of at least three board members and for stipulating the functions of the liquidation committee members. The members of the liquidation committee may be chosen from cadres of the joint enterprise or from specialists outside the joint enterprise.

Every expenditure in liquidating the joint enterprise is the responsibility of the joint enterprise and will receive settlement priority over other debts of the joint enterprise.

Article 49. - The joint enterprise liquidation committee is responsible for reporting to the State Cooperation and Investment Commission from the date the committee is established and begins operations. As of that date, the liquidation committee represents the joint enterprise in every action associated with liquidation before the courts and administrative agencies.

The operational period of the liquidation committee will not exceed 6 months. In necessary cases, this period may be extended but not to exceed 1 year.

Article 50. - The assets of a joint enterprise are evaluated in accordance with their true condition upon entry to the liquidation period. Under circumstances in which the value of assets exceeds the legal capital, the difference is considered as an enterprise profit and calculated under taxable income.

Article 51. - Within 2 months at the latest after concluding its work, the liquidation committee must formulate a liquidation report for presentation to the joint enterprise board of directors and submission to the State Cooperation and Investment Commission.

In cases of disputes between the parties of the joint enterprise on liquidation, the State Cooperation and Investment Commission will still decide to terminate the activities of the liquidation committee if they have reached the 1 year deadline as recorded in Article 49 of this decree. Disputes will be handled in accordance with the stipulations of Article 33 of this decree.

The State Cooperation and Investment Commission will issue a decision cancelling the investment permit and will announce that decision to concerned agencies, and the liquidation committee must return the investment permit to the State Cooperation and Investment Commission.

Article 52. - After a joint enterprise terminates operations, the account books and vouchers relating to the joint enterprise will be stored at the State Cooperation and Investment Commission.

Article 53. - Disputes between the parties of a joint enterprise originating from implementation of the joint enterprise contract must first of all be resolved through negotiation and mediation between the joint enterprise parties.

Under circumstances in which they cannot agree with each other, the disputing parties may choose one of the following forms of arbitration:

—A foreign trade arbitration council in conjunction with the Vietnamese Bureau of Commerce and Industry, arbitration through a third country or international arbitration.

—An arbitration council agreed upon and established by the two parties.

Parties of a joint enterprise must record their agreed upon form of arbitration and arbitration council in the joint enterprise contract.

#### IV

#### 100 PERCENT FOREIGN CAPITAL ENTERPRISE

Article 54. - A 100 percent foreign capital enterprise is an enterprise entirely under the ownership of a foreign organization or individual and established and self-managed by a foreign organization or individual.

Article 55. - A 100 percent foreign capital enterprise may be established under the form of a corporation with limited responsibilities and is a Vietnamese corporation regulated by the law of the Socialist Republic of Vietnam.

Article 56. - The period of operations of a 100 percent foreign capital enterprise is stipulated like that of a joint enterprise as recorded in Article 43 of this decree.

Article 57. - When submitting a request to the State Cooperation and Investment Commission for an investment permit, the foreign organization or individual must also submit the following documents:

- a) The economic and technical argumentation serving as a basis for investment and clarification of the economic and financial benefits of the proposal;
- b) The organizational by-laws or individual legal status of the investor and necessary information concerning the investor, especially his financial situation;
- c) Assurances that the investor has the conditions necessary for long-term business in Vietnam;
- d) The by-laws of the enterprise to be established in Vietnam;
- e) Proposals for preferential conditions, if any;

f) Data requested by the State Cooperation and Investment Commission.

Article 58. - The by-laws of a 100 percent foreign capital enterprise must consist of the following elements:

1. The name and headquarters of the enterprise;
2. The production and business activities of the enterprise;
3. The total investment capital and legal capital of the enterprise;
4. The period of operations of the enterprise;
5. The enterprise management and operations organization; and the individual representing the enterprise before the courts and Vietnamese state agencies;
6. The financial, accounting and account inspection principles;
7. Circumstances and procedures for dissolving the enterprise.

Article 59. - The review and issuance of an investment permit to a 100 percent foreign capital enterprise are conducted in accordance with the sequence and procedures stipulated for a joint enterprise in Section III of this decree.

Article 60. - Any revision of the by-laws of a 100 percent foreign capital enterprise is valid only when agreed upon by the State Cooperation and Investment Commission.

Article 61. - The enterprise owner, if lacking the conditions for residing in Vietnam, must appoint a representative with the authority to live in Vietnam and comply with the regulations in the investment law.

Article 62. - The State Cooperation and Investment Commission is authorized to temporarily halt the operations of or dissolve a 100 percent foreign capital enterprise before its operational termination under circumstances in which the activities of the enterprise are inconsistent with the objective and mission stipulated in the enterprise by-laws and investment permit, or because of serious environmental pollution for which no timely solutions exist.

V

BUSINESS ORGANIZATION

Article 63. - Participants in a cooperative business contract and enterprises with foreign capital have full authority to decide their own production and business program and plan. Vietnamese state agencies will not assign plan norms to the subjects mentioned above.

Article 64. - In the economic and technical argumentation accompanying the request for an investment or business permit, participants in a cooperative business contract and enterprise with foreign capital must clearly state:

- Concerning capital construction: construction preconditions, sources of equipment, machinery, construction materials, water, electricity, raw materials, etc.;
- Concerning the construction plan: sources of raw materials for production;
- Concerning production distribution: exports and distribution within the Vietnamese market, if any.

Article 65. - If the equipment, machinery, means of transportation and raw materials and supplies brought into Vietnam by the foreign country as a contribution that is a part of the investment capital, only a one-time importation request must be submitted.

Equipment, machinery, spare parts, transportation means, raw materials, fuel and supplies, etc. imported to support production in accordance with a cooperative business contract will have a one-time or annual quota approved by the State Cooperation and Investment Commission in accordance with suggestions made by the contract participants. Under the necessary conditions, the import quota may be supplemented or revised following enterprise suggestions.

Import permits will be issued in accordance with current export-import management regulations.

Under the same trade conditions, priority will be given to purchases made in Vietnam in place of importing. In this case, the purchasing will be conducted with Vietnamese economic organizations in accordance with a contract, consistent with Vietnamese law and paid for in foreign or Vietnamese currency, depending on each commodity.

Article 66. - Participants in a cooperative business contract and enterprise with foreign capital have the authority to decide their own form of exportation if the products are consistent with their annual export plan, or are authorized to export as agents of the foreign country or for Vietnamese foreign trade corporations following the choice of the concerned parties.

Article 67. - For those products permitted for distribution on the Vietnamese market, participants in a cooperative business contract and enterprise with foreign capital may engage themselves or commission a Vietnamese business organization to directly engage in distribution in accordance with an economic contract consistent with current Vietnamese law.

VI

LABOR RELATIONS IN ENTERPRISES WITH FOREIGN INVESTMENT CAPITAL

Article 68. - Labor relations in enterprises with foreign investment capital (recruiting, work schedules, days off, labor safety, labor discipline, wages, cash awards, social security subsidies and resolution of labor disputes) are regulated by a labor contract.

Article 69. - An enterprise with foreign investment capital may decide on the signing of labor contracts following one of the following formulas:

- a) Freely choosing and signing a direct labor contract with each laborer following the recommendations of a Vietnamese labor management agency;
- b) Signing a collective labor contract with a trade union established at that enterprise, with a labor supply corporation or with an investment service corporation;
- c) Signing a collective labor contract as stipulated in Point b of this article and on that basis, signing a direct contract with each laborer.

A labor contract signed under any formula must be consistent with the labor regulations of Vietnam for an enterprise with foreign investment capital.

Article 70. - The wages of laborers are agreed upon by both parties consistent with the trade sector, abilities and quality of the worker. Wages must ensure a reasonable standard of living and approach the level of other nations in similar areas and conditions.

Article 71. - Depending upon agreements recorded in the contract, an enterprise with foreign investment capital may pay salaries directly to the laborer or through an organization signing a collective labor contract with the enterprise.

Article 72. - Laborers in an enterprise with foreign investment capital are authorized to form their own trade union organization to ensure labor relations within the enterprise and to serve as a representative of the laborers in problems between them and the enterprise.

An enterprise with foreign investment capital is responsible for creating favorable conditions for achieving trade union functions.

VII

FINANCIAL ISSUES

Article 73. -

1. Enterprises with foreign investment capital and foreign parties engaged in business cooperation on a contract basis will pay income taxes on their profits as follows:

- a) Priority bracket: from 19 to 20 percent of the profits received;
- b) General bracket: from 21 to 25 percent of the profits received;

2. The priority bracket consists of investment proposals in the fields recorded in Article 3 of the Investment Law and have two of the following qualifications:

- a) The legal capital of the enterprise is at least 10 million U.S. dollars;
- b) The technique transferred to the enterprise answers at least two requirements recorded in Point 2, Article 41 of this decree;
- c) Exports at least 80 percent of the product or services supplied receive at least 80 percent in foreign exchange;
- d) The profit rate compares with the average profit rate of other proposals in the same sector;
- e) Investment in regions with difficult natural and unfavorable social conditions;
- f) Investment in [one word unreadable] implementing the Investment Law.

3. The general bracket consists of investment proposals not falling under the purview of the priority bracket above.

4. Based on points 2 and 3 above, the State Cooperation and Investment Commission will decide a specific tax rate for each investment proposal within the tax framework recorded in Point I of this article.

5. For sectors exploiting petroleum products and a number of other rare natural resources, the State Cooperation and Investment Commission will decide an income tax rate for each specific case higher than 25 percent of the profits received, consistent with international precedent and upon examining the suggestions of the foreign investor.

Article 74. - Concerning joint enterprises within the priority purview and based on the standards stipulated in Article 73, Point 2 of this decree, the State Cooperation and Investment Commission may waive the income

taxes for a maximum period of 2 years from the time the business becomes profitable and reduce the income taxes by 50 percent for a maximum of 2 succeeding years.

Article 75. -

1. Under special circumstances in which it is necessary to encourage investment, the State Cooperation and Investment Commission may allow a joint enterprise to enjoy the following special financial incentives:

a) Paying income taxes at a rate of 10 to 14 percent of the profits received;

b) Waiving income taxes for a maximum period of 4 years and reducing income taxes by 50 percent for a maximum period of 4 succeeding years figured from the time that the enterprise begins to make a business profit.

2. In order to enjoy special financial incentive conditions, besides falling within the purview stipulated in Article 73 of this decree, a joint enterprise must have standards such as: operations under specially difficult conditions, in remote and distant locations, extremely low levels of development, and at a low profit level but with enterprise operations of a major significance to the national economy.

Article 76. - Foreign economic organizations or individuals will pay taxes on profits transferred to a foreign country at the following rates:

1. For foreign economic organizations or individuals with a capital contribution of more than 50 percent of the legal capital or with a capital contribution of more than 10 million U.S. dollars: 5 percent of the profits transferred to a foreign country.

2. Cases not recorded in Point 1 of this article: 10 percent of the profits transferred to a foreign country.

Article 77. - Foreign economic organizations or individuals using the divided profits for reinvestment of 3 years or more will have the income taxes they have paid associated with the portion of reinvested profits waived by the tax agency.

Article 78. - The tax payment year for enterprises with foreign investment capital and parties engaged in business cooperation on the basis of contracts will commence on 1 January and end on 31 December of the solar calendar year.

Enterprises and parties engaged in business cooperation may suggest to the Ministry of Finance of the Socialist Republic of Vietnam that their own 12-month fiscal year be used for figuring and paying income taxes.

Article 79.- The taxable income of an enterprise with foreign investment capital is the difference between the total receipts and total expenditures during the year in which taxes are calculated.

Taxable income consists of the taxable income of the primary facilities added to that of the secondary facilities (if any) of the enterprise.

a) Receipts consist of: those acquired through product distribution and the supply of services to outside parties and other secondary profits produced by any business activity of the enterprise.

b) Expenditures consist of:

—Those in raw materials and energy for producing primary products, secondary products or in the supply of services;

—Wages and allowances paid foreign and Vietnamese laborers working in the enterprise;

—Depreciation of fixed assets used in business production. The rate and level of depreciation are agreed upon by both parties and approved by the Vietnamese Ministry of Finance;

—Expenses in purchasing or renting the use of technical data, patents, technique permits and technical services;

—Enterprise management expenses;

—Tax accounts or those of a paid tax nature;

—Expenses directly relating to product distribution or service supply;

—Deposits to the social security fund;

—Insurance for the enterprise's assets;

—Losses from previous years;

—Other expenditures but not exceeding 5 percent of the total amount. Article 80. - For business cooperation contracts, methods of defining the profits will be decided by the State Cooperation and Investment Commission, consistent with the form of cooperation and in accordance with suggestions of the cooperating parties.

Cases of cooperation in which there is a division of products, income taxes and other interests of Vietnam (consisting of the right to use land, Water surface, the sea, natural resource funds, etc.) will be combined with the Vietnamese party's portion of the divided product.

Article 81. - An enterprise with foreign investment capital and participants of business cooperation contracts will have import taxes waived in the following cases.:

a) When equipment, machinery, parts, business and production means (consisting of transportation means) and materials contribute to the capital of the enterprise with foreign capital investment or to capital for business cooperation;

b) When equipment, machinery, parts and materials are imported with capital that is part of the total investment capital of an enterprise with foreign investment capital;

c) When raw materials, loose components, parts and materials are imported for the production of export goods.

Commodities recorded in points a, b and c of this article, if sold on the Vietnamese market, must have import and commodity taxes paid in accordance with the stipulations of Vietnamese law.

Article 82. - If enterprises with foreign investment capital and foreign parties engaged in business cooperation on a contract basis have service operations collecting Vietnamese currency or if their products are distributed on the Vietnamese market, they must pay import taxes and business or commodity taxes in accordance with Vietnamese law.

Article 83. - Foreigners and Vietnamese working in enterprises with foreign investment capital or engaged in business cooperation contracts must pay income taxes in accordance with the stipulations of Vietnamese law.

Article 84. - Land, forests, the sea and other resources within the territory of Vietnam fall under the sovereignty of the Socialist Republic of Vietnam.

Under circumstances in which resource funds and land, water surface and sea rental funds are not placed in the capital contribution of the Vietnamese party in accordance with the stipulations of Article 7 of the Investment Law, an enterprise with foreign investment capital and parties engaged in business cooperation on a contract basis must pay those accounts. Resource funds are defined consistent with international precedent on the principle of all parties sharing in the profits.

Land, water surface and sea rental fees are defined based on the specific conditions of each locality.

## VIII

### MANAGEMENT OF FOREIGN EXCHANGE

Article 85. - Capital funds and income in the foreign and Vietnamese currency of an enterprise with foreign investment capital must be deposited in an enterprise

account opened in the Vietnam Foreign Trade Bank, in a branch of a joint enterprise bank between Vietnam and the foreign country, or in a branch of a foreign bank located in Vietnam that is approved by the Vietnam State Bank. Opening an account in Vietnamese currency must follow the guidance of the Vietnam State Bank. Receipts and disbursements of the enterprise must all pass through this account. The foreign participant of a business cooperation contract, if necessary, may also open such an account as noted above. Article 86. - An enterprise with foreign investment capital is authorized to change the foreign currency in its account into Vietnamese currency, if necessary.

Article 87. - On the principle of self-equilibrium between receipt and expenditure sources and foreign currency, except for unique cases such as the production of goods to replace imports or the construction of low level structural projects, receipts acquired in foreign currency from exports and other sources must at least fill the needs of those in foreign currency of the enterprise, including the transfer of profits of the investor to a foreign country and payment of wages and allowances to the Vietnamese laborers working in the enterprise, even though these amounts may be paid in Vietnamese currency.

Article 88. -

1. Foreign economic organizations or individuals investing in Vietnam may transfer to foreign countries:

- a) A portion of the profits earned from business operations;
- b) Income earned through the supply of services and transfer of techniques;
- c) Loans and interest earned from loan accounts;
- d) Funds and other assets under their legal ownership.

The transfer of these funds may be conducted only after full payment of the required taxes.

2. Foreign economic organizations and individuals are authorized to transfer to foreign countries a portion of the capital and that capital reinvested in the enterprise after settling all debts, if any, under circumstances in which the enterprise is terminated and dissolved.

3. The transfer of capital to a foreign country in accordance with this article will ordinarily be divided into three equal years. Under special cases, the Vietnam State Bank may conduct the transfer over a shorter period of time.

4. Under circumstances in which the amount of money intended for transfer to a foreign country in accordance with Point 2 of this article is greater than the initial

(root) capital contributed and the reinvested capital, and foreign organization and individual must request approval from the State Cooperation and Investment Commission.

Article 89. - Foreigners working in Vietnam in accordance with business cooperation contracts or in enterprises with foreign investment capital are authorized to transfer to a foreign country, in foreign currency, their wages and other legal income after deducting the required taxes and their living expenses in Vietnam.

Article 90. - The changing of foreign currency into Vietnamese currency and the reverse that is aimed at objectives of investment, transferring funds, transferring capital and conducting the business activities of the enterprise is carried out in accordance with the official rate of exchange announced by the Vietnam State Bank and in accordance with the foreign exchange management system of Vietnam.

Article 91. - Every exchange in foreign and Vietnamese currency must be conducted through the banks recorded in Article 85 of this decree.

## IX

### ACCOUNTING AND ACCOUNT INSPECTION

Article 92. - An enterprise with foreign investment capital will maintain accounts in accordance with the following elements:

- 1. The situation of assets, materials and capital funds used in production and business activities and changes in this situation;
- 2. The situation of receipts, expenditures and income;
- 3. The process and results of operations consisting of purchasing, production, distribution, profits and losses and distribution of production and business activity returns.

The foreign participant in a business cooperation contract will maintain accounts following a theme consistent with each type of business cooperation.

In principle, the account records will be conducted in the Vietnamese language. However, under circumstances in which there is agreement between the joint enterprise parties and when permitted by the State Cooperation and Investment Commission, the accounts may be maintained in a foreign language.

Article 93. - The bookkeeping must ensure accuracy, completeness and timeliness and be systematic.

Article 94. -

1. The unit of measurement is the official unit of measurement in Vietnam. Other units of measurement recorded in accounting documents must be converted into the official unit of measurement in Vietnam.

2. The unit of currency, in principle, is the dong of the Bank of Vietnam but may also be a unit of foreign currency agreed upon by both parties and approved by the State Cooperation and Investment Commission.

Article 95. - The fiscal year of an enterprise with foreign investment capital must be consistent with the tax calculation year of the enterprise as recorded in Article 78 of this decree.

Article 96. - The accounting of enterprises with foreign investment capital is conducted following the general international principles and standards and recognized by the Vietnam Ministry of Finance. The accounting system consists of:

- a) An account system;
- b) A form of accounting and recording numbers;
- c) A model system of account reporting;

Article 97. -

1. Account reporting consists of:

- a) An accounting balance sheet;
- b) A profit and loss calculation sheet;
- c) A report of the enterprise board of directors.

2. The accounting balance sheet of an enterprise with foreign investment capital must reflect the capital situation, capital source and capital use of the enterprise at the end of the fiscal year. The profit and loss calculation sheet of the enterprise must reflect every expenditure and a reasonable income during the fiscal year and the profits and losses of the enterprise.

The report of the enterprise board of directors must present the true situation and results of enterprise operations, and the distribution and use of production and business operation returns.

3. The accounting report of an enterprise with foreign investment capital must be submitted to the State Cooperation and Investment Commission and the income tax collection agency of the Finance Ministry within a period of 3 months from the close of the enterprise's fiscal year.

Article 93. -

1. The inspection of accounts for enterprises with foreign investment capital is conducted in a cycle of once a year.

2. The Vietnam Ministry of Finance will assign a specialist agency to inspect the account books and reports, and to contribute opinions on the accounting system of the enterprise.

Article 99. - The inspecting agency has a mission of reporting the results of the account inspection; and the inspection report will consist of the following elements:

- 1. The situation of accounting as conducted in the enterprise;
- 2. The accuracy of accounting data and reports;
- 3. Execution of the accounting system and measures;
- 4. The situation of account inspection system execution by the enterprise;
- 5. Proposals.

Article 100. - The formulation of an account inspection report and submission to responsible agencies must be completed before the period of account report submission noted in Article 97 of this decree.

X

CUSTOMS, IMPORTATION, RESIDENCY, LIAISON, AND COMMUNICATIONS

Article 101. - An enterprise with foreign investment capital and participants in a business cooperation contract must pay the trade export and import taxes recorded in Articles 81 and 82 of this decree.

Article 102. - The personal articles that a foreign participant in an enterprise with foreign investment capital, in a business cooperation contract, or working in the enterprise brings into Vietnam will receive preferential treatment in accordance with current regulations.

Article 103. - The Ministry of Foreign Economic Relations will issue export and import permits for trade goods.

The Customs General Department will issue export and import permits for the personal articles brought by foreigners into Vietnam that are recorded in Article 102 of this decree.

Article 104. - The Customs General Department will create every favorable condition in conducting customs procedures for enterprises with foreign investment capital as well as foreigners working for those enterprises and participants in business cooperation contracts.



Article 105. - Foreigners entering Vietnam to seek understanding on and to prepare for investment may be issued entry visas valid for many times over a period not to exceed 3 months and extendable every 3 months.

Article 106. - Foreigners participating in formulation of an investment proposal (including foreign assistants) may be issued entry visas valid for many times over a period ordinarily not exceeding 1 year and extendable once a year, consistent with the contract period and figuring the time necessary for activities associated with dissolving the enterprise or terminating the contract.

Article 107. -

1. Ordinarily, entry visas will be issued at agencies representing the foreign affairs or leadership agencies of the Socialist Republic of Vietnam in foreign countries 5 days at the latest after being requested by the applicant.

2. Under circumstances in which the foreigner is a citizen of a country that has signed an agreement with the government of Vietnam on waiving some types of entry and exit visas, the signed agreement will apply.

3. In urgent cases, to handle the unexpected, and to provide technical assistance to the investment project, a foreigner, whether or not a member of an enterprise with foreign investment capital, may be issued an entry visa at the point of entry with the condition that it is a requirement of the authorized representative of the enterprise or of the Vietnamese economic organization participating in the business cooperation contract. This requirement must be announced to the State Cooperation and Investment Commission 24 hours before entry.

Article 108. - The foreigners mentioned in Articles 105 and 106 of this decree are free to travel in the localities necessary for production and business operations that have been registered at the Vietnam Cooperation and Investment Commission except for "forbidden areas." They may also visit other areas with permission from government authorities with jurisdiction. Tourism is conducted under the guidance of the Vietnam General Tourism Department.

Article 109. - The regulations on special privileges in entry, residency and travel mentioned in the article above are applicable to the wives, husbands and children and to other members of the family living with the foreigner (including the family's private servants) mentioned in Article 106 of this decree during the period in which that individual is residing in Vietnam.

Article 110. - After completing the procedures necessary for Vietnamese posts and telecommunications, foreigners working in enterprises with foreign investment capital may:

- Have priority in using the postal administrative techniques and telecommunications of the Vietnam Posts and Telecommunications to communicate within the territory of Vietnam and outside the country;
- Organize a private communications system for the direction of production and business within the enterprise.

## XI

### FINAL PROVISIONS

Article 111. - This decree is effective as of its date of signature.

Article 112. - The ministers of External Economic Relations, Foreign Affairs, Finance, Labor, War Invalids and Social Welfare and Interior, the Director of the State Bank, and the Chief of the Customs General Department within the purview of their functions and authority are responsible for promulgating guidance circulars on implementing this decree, at the latest 45 days after this decree becomes effective.

Article 113. - Ministers, state commission chairmen and other agency leaders in the Council of Ministers and the chairmen of provincial, municipal and central government directly subordinate special zone people's committees are responsible for implementing this decree.

Representing the Council of Ministers

Signed:

Chairman

Vice Chairman